

SIDLEY AUSTIN BROWN & WOOD LLP
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SAN FRANCISCO
SEATTLE

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

BEIJING
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(202) 736-8218

WRITER'S E-MAIL ADDRESS
pandros@sidley.com

March 28, 2002

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

REDACTED – FOR PUBLIC INSPECTION

Re: *Joint Application by BellSouth Corporation for Authorization to Provide
In-Region InterLATA Services in Georgia and Louisiana*
CC Docket No. 02-35


Dear Mr. Caton:

Enclosed for filing please find the Reply Comments of AT&T Corp. ("AT&T") in connection with the above referenced matter. Pursuant to the Public Notice issued February 14, 2002, AT&T is submitting one (1) copy of its reply comments and supporting exhibits in redacted form via ECFS.

AT&T is also submitting under seal the portions of the reply comments and supporting exhibits that contain material designated as confidential pursuant to the Protective Order in this matter. These pages bear a legend indicating that they are confidential.

Please let me know if any additional information is required. Thank you.

Very truly yours,


Peter M. Andros
Legal Assistant

Encl.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
)
)
)
)
)
)
)
)
)

**Joint Application by BellSouth Corporation,
BellSouth Telecommunications, Inc., and
BellSouth Long Distance, Inc. for Provision of
In-Region, InterLATA Services Georgia And
Louisiana**

CC Docket No. 02-35

**SUPPLEMENTAL REPLY COMMENTS OF AT&T CORP. IN RESPONSE
TO BELL SOUTH CORPORATION'S SUPPLEMENTAL BRIEF**

Mark C. Rosenblum
Lawrence J. Lafaro
David Eppsteiner
Richard Rocchini
AT&T CORP.
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4263

Peter D. Keisler
Merinda Wilson
Richard E. Young
Ronald S. Flagg
Alan C. Geolot
Christopher T. Shenk
SIDLEY AUSTIN BROWN & WOOD, LLP
1501 K Street, NW
Washington, D.C. 20005
(202) 736-8000

Attorneys for AT&T Corp.

March 28, 2002

INTRODUCTION AND SUMMARY

The comments filed in this proceeding overwhelmingly confirm both the seriousness and the persistence of many of the problems that had previously been identified with BellSouth's OSS, its performance data, its provisioning of UNE-P orders, and its UNE prices in Georgia and Louisiana. It is no surprise that these problems remain present, and continue to pose substantial obstacles to CLECs that are attempting to compete with BellSouth. The speed with which BellSouth submitted its new application was itself an indication that BellSouth had not taken these problems seriously and had not made genuine and *verifiable* improvements in response to the failure of its prior application. Instead, it chose to make and rely upon changes that were more cosmetic than substantive, that were hurriedly implemented, and that remain both incomplete and untested.¹

These weaknesses are repeatedly confirmed by the body of the evaluation submitted by the Department of Justice ("DOJ"). DOJ expressly qualified its recommendation to make clear that it is "subject to the Commission's review of the concerns expressed in this Evaluation" (DOJ at 3, 21-22), and those concerns establish that the Application should be denied. For example, DOJ correctly observes that BellSouth repeatedly violated its change control procedures in implementing its recent "fixes,"² and that the data on many of those fixes is

¹ See, e.g., Birch at 9 (noting BellSouth's "extreme haste to sway this Commission with incomplete or invalid evidence"); CompTel at 2 ("carriers have not experienced any sustained or notable improvements in BellSouth's performance"); WorldCom at 3 ("Many of [BellSouth's] fixes are not even scheduled until close to the end of the 90-day period"); US LEC and XO Georgia at 36 ("Given BellSouth's deplorable levels of performance prior to the one month it claims to have satisfied the performance standard, the Commission must insist upon a demonstration of repeated compliance with the standard"); Covad at 1 (BellSouth's "efforts have not yet paid off").

² See, e.g., DOJ at 7 ("in implementing these changes to its OSS BellSouth appears to have violated important change management principles and this has resulted in exceptions being

not yet remotely complete.³ DOJ's qualified support ultimately rests on its prediction that BellSouth will be able to prove or achieve satisfactory performance in the future.⁴ It is well settled, however, that promises and predictions of future satisfactory performance cannot be the basis for a grant of Section 271 authority. *See Michigan 271 Order*, ¶ 55 ("a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior").

These Supplemental Reply Comments address the continuing deficiencies in BellSouth's application in detail. Part I addresses BellSouth's failure to provide nondiscriminatory access to its OSS. The comments confirm that BellSouth still fails to meet its OSS obligations in numerous respects, including the "four discrete areas" of its OSS that BellSouth chose to address in its latest Application: integration of pre-ordering and ordering

opened by KPMG in the Florida OSS test"); *id.* at 8 ("Because of inadequate provision for CLEC testing, problems that could cause a substantial increase in the number of rejects were discovered the day before the initial release was implemented"); *id.* at 10 (change on parsing "was introduced without adequate testing and with defects . . . KPMG regards [those defects] as significant and strongly criticized BellSouth for not completing important internal testing before implementing the release").

³ *See, e.g.*, DOJ at 11 ("the changes are so recent that their full effect is not yet reflected in the performance reports"); *id.* at 13 (BellSouth "unfortunately obscured" efforts to assess claimed improvements in service order accuracy "by significant changes in how BellSouth has measured accuracy starting with November data"); *id.* at 14 (BellSouth's "practice" of "unilaterally chang[ing] metrics without notice to or input from interested parties . . . substantially diminishes the value of an independent, third-party audit of the performance system"); *id.* at 18-19 ("[t]he reduced number of restatements is not proof that the underlying problems that led to the former pattern of restatements have been resolved or that the current data are accurate"); *id.* at 20 ("until the Georgia metrics audit is complete or until there is additional commercial experience with the reported metrics, the Commission should not rely solely on BellSouth's performance reports in reviewing otherwise credible complaints that BellSouth is not meeting the requirements of the Act").

⁴ *See* DOJ at 2-3 ("additional improvements in BellSouth's OSS have been identified and will be implemented under the direction of the Georgia and Louisiana Public Service Commissions, and . . . final completion of the metrics audit under the auspices of the Georgia PSC should further improve the accuracy and reliability of BellSouth's performance reports"); *id.* at 18 (DOJ "expects BellSouth to comply with whatever approach is chosen" on change management).

functionalities, service order accuracy, access to due date functionality, and change control. *See* Application at 1, 6. Moreover, KPMG's ongoing third-party testing in Florida continues to find significant problems with BellSouth's OSS.⁵

The comments show, for example, that BellSouth has not provided functionality that enables CLECs to "parse" customer service records, and to receive accurate due dates for their orders, to the same extent as BellSouth's retail operations. The evidence also establishes that BellSouth – which enjoys a retail flow-through rate of nearly 100 percent – continues to deny equivalent flow-through capability to CLECs, by causing more than 20 percent of CLEC orders to fall out for manual processing due to BellSouth's system design or BellSouth system errors. In addition, the comments confirm that BellSouth renders poor performance in the areas of service order accuracy (notwithstanding BellSouth's attempt to portray its service order accuracy rate as "improved," by recently and unilaterally changing its methodology for calculating that rate) and provisioning accuracy.

Finally, the comments establish that BellSouth's change control process ("CCP"), including the test environment that it provides to CLECs, continues to be fundamentally flawed, despite the modifications to the CCP that BellSouth has recently made or promises to make. Even BellSouth's professed commitment to an effective CCP is questionable, since – as the Department of Justice points out – BellSouth has *disregarded* the requirements of the existing CCP in implementing some of the recent "enhancements" to its OSS upon which it bases its new Application.

⁵ As AT&T has previously stated, although AT&T disputes BellSouth's claim that its OSS are regionwide, BellSouth cannot consistently maintain that position while asking the Commission to disregard the numerous deficiencies in its OSS that are being identified in the Florida third-party test.

The comments of the Georgia and Louisiana PSCs disregard this evidence in reiterating their previous endorsements of BellSouth's application. The Georgia PSC accepts BellSouth's claims of improved OSS performance at face value – while the Louisiana PSC fails to address OSS issues at all.

Part II of these Reply Comments addresses issues relating to BellSouth's performance measurements and remedy plans. The comments confirm that the performance measurements and data on which BellSouth relies fail to demonstrate BellSouth's present compliance with the checklist, and that BellSouth's performance remedy plans contain structural defects that prevent them from serving as effective deterrents against future backsliding. The inherent deficiencies in BellSouth's performance data have been confirmed by the CLECs, identified by the DOJ, and revealed during the metrics audits that are being conducted in Florida and Georgia – audits that are far from complete. Even BellSouth's own inadequate performance data show that it has not met its statutory obligations. Furthermore, the comments show that there is no rational basis for BellSouth's assertion that its self-executing enforcement mechanisms are sufficient to deter anticompetitive conduct in the future.

The contrary conclusions of the Georgia and Louisiana PSCs are not supported by the evidence. The PSCs fail to analyze many of the deficiencies in BellSouth's performance reporting and remedy plans, accept BellSouth's rationalizations and explanations, or rely on BellSouth's promises to improve performance.

Part III addresses BellSouth's failure to offer UNE-P on a nondiscriminatory basis. Other CLECs experience the same problems with outages and service difficulties to which AT&T has been subjected, largely as a result of BellSouth processes that generate premature disconnections and errors by BellSouth personnel. Moreover, several CLECs, like AT&T, have

faced substantial problems as a result of BellSouth's failure to develop a workable process for converting prospective UNE-P customers who receive BellSouth's DSL service. The new "process" that BellSouth has announced to address the problem has not yet been finalized or made available to CLECs, is still being tested, may or may not work – and thus patently cannot be a basis for approving this Application in the face of the proven unacceptable performance on this matter to date.

Part IV addresses pricing issues. It demonstrates that BellSouth has done nothing to address the serious TELRIC errors in its Georgia and Louisiana cost studies. As explained by the comments, BellSouth has simply refiled the same rates with the same flaws that it filed with its original joint application. Furthermore, the attached Declaration of Steven E. Turner identifies additional TELRIC errors in BellSouth's Georgia cost studies that inflate its Georgia DUF rates. Thus, BellSouth's Georgia and Louisiana UNE still violate Checklist Item 2.

As demonstrated by AT&T, however, if the Commission nevertheless decides to approve BellSouth's Georgia application, it should at least condition that approval on immediate adoption of the non-loop and DUF rates that BellSouth has proposed in the ongoing Georgia state proceeding. All parties, including BellSouth, agree that BellSouth's switching and DUF rates should not exceed those levels. Failure to reset those rates now could distort future Section 271 applications and pricing proceedings in other BellSouth states by establishing the current excessive rates as a benchmark.

Finally, AT&T demonstrates in Part IV that BellSouth's Louisiana UNE rates independently violate both the checklist and Section 271's public interest test because those rates implement a "price squeeze" that forecloses residential competition in that State. Thus, whether the Commission chooses to approve or deny BellSouth's Georgia Section 271 Application, its

Louisiana Application must be denied on the basis of these checklist and public interest violations.

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	i
FCC ORDERS CITED	viii
DECLARATIONS IN SUPPORT OF AT&T's OPPOSITION TO BELLSOUTH'S SECTION 271 APPLICATION FOR GEORGIA AND LOUISIANA	ix
I. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ITS OSS (CHECKLIST ITEM 2).	1
A. The Comments Demonstrate That BellSouth's Interfaces Still Fail To Provide Nondiscriminatory Access.	3
1. BellSouth Fails To Provide Nondiscriminatory Access To Pre- Ordering Functions.	3
2. The Comments Confirm That BellSouth Continues To Place Excessive Reliance on Manual Processing.	10
3. The Comments Confirm That BellSouth's Poor Rates of Service Order Accuracy and Provisioning Accuracy Continue To Deny Parity of Access.	15
B. The Comments Confirm That BellSouth's Change Control Process Does Not Give CLECs a Meaningful Opportunity To Compete.	19
1. BellSouth Has Neither Implemented, Nor Followed, an Adequate Change Control Process.	20
2. BellSouth Fails To Provide an Adequate and Stable Test Environment.	24
II. BELLSOUTH'S PERFORMANCE DATA AND REMEDY PLANS ARE INADEQUATE TO SHOW THAT BELLSOUTH HAS SATISFIED ITS SECTION 271 OBLIGATIONS.	26
A. BellSouth's Performance Data Are Fundamentally Flawed.	28
1. BellSouth's Performance Measurements Are Unreliable.	28
2. BellSouth Has Improperly Implemented Performance Measures.	28
3. The Audits Do Not Prove That BellSouth's Data Are Accurate.	32
B. The Data Show That BellSouth Is Not Meeting Its Statutory Obligations.	35
C. BellSouth's Performance Remedy Plans Will Not Prevent Backsliding.	36
III. BELLSOUTH STILL DOES NOT MAKE UNE-P AVAILABLE ON A NON- DISCRIMINATORY BASIS.	38
IV. THE COMMENTS CONFIRM THAT BELLSOUTH'S INFLATED UNE RATES PRECLUDE A GRANT OF THIS JOINT APPLICATION.	42
CONCLUSION	48

FCC ORDERS CITED

SHORT CITE	FULL CITE
<i>Louisiana II Order</i>	Memorandum Opinion and Order, <i>Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana</i> , 13 FCC Rcd. 20599 (1998)
<i>Michigan 271 Order</i>	Memorandum Opinion and Order, <i>Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan</i> , 12 FCC Rcd. 20543 (1997)
<i>New York 271 Order</i>	Memorandum Opinion and Order, <i>Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York</i> , 15 FCC Rcd. 3953 (1999)
<i>Pennsylvania 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon Pennsylvania Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania</i> , CC Docket No. 01-138 (rel. Sept. 19, 2001)
<i>Rhode Island 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New England Inc., et. al., for Authorization to Provide In-Region InterLATA Services in Connecticut</i> , CC Dkt. No. 01-324 (rel. February 22, 2002)
<i>Texas 271 Order</i>	Memorandum Opinion and Order, <i>Application by SBC Communications Inc., et al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas</i> , 15 FCC Rcd. 18354 (2000)

**DECLARATIONS IN SUPPORT OF AT&T's OPPOSITION TO
BELLSOUTH'S SECTION 271 APPLICATION FOR
GEORGIA AND LOUISIANA**

CC Docket No. 02-35

EX.	DECLARANT	SUBJECT(S) COVERED
A	Robert Bell	Performance Measures/Remedy Plan
B	Norris/Bursh	Performance Measures/Remedy Plan
C	Steven E. Turner	TELRIC Errors In BellSouth's Georgia Cost Study

⁶ AT&T at 6-30; Birch at 7-35; CompTel at 2-6; Covad at 2-15; KMC at 3-4, 10; Mpower at 6-14; Network at 5-9; US LEC at 26-40; WorldCom at 1-35; Xspedius at 3-9.

accuracy, and an inadequate change control process), and that BellSouth denies parity of access to its OSS in numerous other respects.

The deficiencies in BellSouth's OSS described by these comments belie the conclusion of the Georgia Public Service Commission ("GPSC") that BellSouth is in compliance with its OSS obligations.⁷ The GPSC's finding that BellSouth's recent "enhancements" to its OSS have resolved the concerns expressed by the Commission and the Department of Justice ("DOJ") is contrary to the evidence. GPSC at 1.⁸

The failure of BellSouth to provide nondiscriminatory access is confirmed by the results of the ongoing third-party testing of its OSS in Florida. As the DOJ notes, in view of BellSouth's claim that its OSS are regionwide, the Florida test not only is "appropriate to take into consideration" but also has generated results "that are relevant to this application." DOJ Eval. at 3. The comments make it clear that KPMG's testing continues to find a "plethora of . . . serious and ongoing deficiencies" in the OSS that deprive CLECs of a meaningful opportunity to compete. Covad at 13. As of March 27, 2002, 51 Exceptions and 24 Observations remain open

⁷ In contrast to the GPSC, the Louisiana Public Service Commission ("LPSC") does not address *at all* the issue of whether BellSouth is providing nondiscriminatory access to its OSS. Other than reaffirm its previous recommendation that BellSouth's application be approved, the LPSC devotes its four pages of comments to a description of its "continuing efforts to promote competition in the local service market." LPSC at 1. The LPSC does not even refer to OSS issues, other than to cite its February 8, 2000 collaborative workshop regarding "operational issues that continue to exist" and its recent order establishing penalties on BellSouth to ensure that the parsed CSR functionality and single "C" order process are implemented according to the LPSC's schedule. LPSC at 2-3.

⁸ The GPSC bases its finding that BellSouth is providing nondiscriminatory access primarily on the "explosive growth" of UNE-Ps and unbundled loops in service. GPSC at 4 & n.4. The growth in customers served through the UNE-P and UNE loops, however, reflects only the desire of consumers for an alternative to BellSouth's monopolistic service, and the determination of the CLECs to provide such an alternative notwithstanding the deficiencies in BellSouth's OSS. Moreover, the most recent data released by the FCC show that the end-user lines served by CLECs in Georgia and Louisiana decreased over the previous reporting period. Compare: Local

in the test – which has not been completed.⁹ In view of KPMG's findings, and the evidence of record, BellSouth cannot reasonably be found to be in compliance with its OSS obligations.¹⁰

A. The Comments Demonstrate That BellSouth's Interfaces Still Fail To Provide Nondiscriminatory Access.

The comments describe numerous areas in which the design and implementation of BellSouth's OSS deny CLECs the parity of access required by the 1996 Act. This is particularly the case with respect to parsing functionality, access to due dates, flow-through capability, service order accuracy, and provisioning accuracy.

1. BellSouth Fails To Provide Nondiscriminatory Access To Pre-Ordering Functions.

BellSouth has not provided nondiscriminatory access to pre-ordering functions, in two significant respects. First, BellSouth has failed to give CLECs the same ability to integrate pre-ordering and ordering functions that BellSouth has in its own retail operations. Second, BellSouth still does not provide equivalent access to due dates.

Telephone Competition Status as of December 31, 2000 (May 2001) with Local Telephone Competition Status as of June 30, 2001 (February 2002), Table 6.

⁹ The substantial number of uncorrected OSS defects found in the testing in Florida undoubtedly contributed to the Florida PSC's recent decision to: (1) extend the deadline for the submission of KPMG's final report on the test to June 21, 2002, and (2) postpone its own vote on BellSouth's 271 application for Florida until September 2002. See AT&T Bradbury/Norris Supp. Decl. ¶ 200; Case Assignment and Scheduling Record for Florida PSC Docket No. 960786B-TL, dated February 27, 2002.

¹⁰ Like KPMG's volume testing in Florida to date, the comments confirm that the ability of BellSouth's OSS to handle reasonably foreseeable volumes of CLEC orders has not yet been demonstrated. See AT&T at 30 n.31. The comments, for example, show that frequent outages occur on BellSouth's interfaces, undercutting the CLECs' ability to compete. See *id.* at 42 n.34 & Seigler Supp. Decl. ¶ 17; Birch at 19-21; US LEC at 32-33. Only last week, KPMG issued a new Observation because, during its volume performance testing, BellSouth did not return fully mechanized auto-clarification responses that would have been expected in response to KPMG's orders. See KPMG Observation 175, dated March 18, 2002 (attached hereto as Attachment 1).

Parsing Functionality. The comments show that BellSouth has not provided CLECs with the same ability to “parse” customer service records (“CSRs”) in connection with creating local service requests. Without that ability, CLECs lack the same capability to fully integrate pre-ordering and ordering functions that BellSouth has in its own retail operations. AT&T at 8-15; Birch at 25-26.

While the GPSC has determined that BellSouth has satisfactorily implemented its parsed CSR functionality, *see* GPSC at 12-15, the opposite conclusion should have been reached. The GPSC cites testing by third-party vendors as proof that the functionality works “as specified.” That conclusion begs the question of whether BellSouth’s functionality provides nondiscriminatory access. *Id.* at 12. In any case, the “vendor” testing cited by the GPSC was inadequate in scope and otherwise unreliable. AT&T at 10 & Bradbury/Norris Supp. Decl. ¶¶ 35, 37-39.¹¹

¹¹ The GPSC asserts that three vendors have tested the parsed capability, even though BellSouth’s application to this Commission cited only two – Telcordia and Exceleron. GPSC at 12; Application at 19; Stacy/Varner/Ainsworth Aff. ¶ 60. The “third vendor” to which the GPSC refers is apparently *** ***, which BellSouth cited in an affidavit filed February 25, 2002, with the GPSC. *See ex parte* letter from Sean A. Lev to William Caton (dated February 27, 2002) (“February 27 *ex parte*”), Attachment A (Affidavit of William N. Stacy), ¶ 24 & Exh. WNS-8. The *** ** test report is dated December 19, 2001 – almost two months before BellSouth filed its Application. *Id.*, Exh. WNS-8 at 2-46. Because BellSouth did not choose to rely on this testing in its Application, the Commission should give it no weight. In addition, the report of *** ** shows that its testing was unreliable. First, *** ** had a potential conflict of interest, since it is ***

***. *See* Stacy/Varner/Ainsworth Aff., ¶¶ 22-23. Second, *** ** simply built a “working prototype” to integrate with the parsed CSR functionality (as opposed to building a commercial product using the parsed CSR). February 27 *ex parte*, Att. A, Exh. WNS-8 at 3, 46. Third, *** ** auto-populated only 20 of the 87 fields that BellSouth claims to have included in the parsed CSR functionality, using totally fictitious data (such as “CLEC test bed”) rather than actual data from BellSouth’s databases. *See id.* at 16, 18, 20-23; *Louisiana II* 271 Order ¶ 102 (rejecting prototype as evidence of integratability, because of its limited scope).

The comments of Birch call into question the reliance on Birch's "testing" of its recently-implemented parsing functionality as evidence that the functionality is adequate. Birch at 25-26; Application at 19; GPSC at 13. Birch states that its testing is "by no means a barometer by which to measure" the adequacy of the parsing functionality, because Birch simply conducted a "[p]roof of [c]oncept" test "in conjunction with an internal software interface." Birch at 26. Birch's test did not determine the integrity of individual CSR fields or data, and only involved four transactions. *Id.* Indeed, Birch states that if it had placed the parsed CSR into actual production with the defects in that functionality later admitted by BellSouth, "it would [have been] near worthless." *Id.* Thus, BellSouth's reliance on Birch's testing is nothing more than "an embellishment meant to sway this Commission." *Id.*

The inadequacy of the testing cited by BellSouth in its Application was recently recognized by the Florida PSC. In late February, after its Staff interviewed CLECs regarding the parsed CSR functionality, the FPSC asked KPMG to conduct a test of the functionality as part of its third-party OSS testing.¹² The Florida PSC would not have taken such action if it considered the testing cited by BellSouth in its Application (which had been filed two weeks earlier) to be reliable.

The various other bases cited by the GPSC do not support its conclusion that BellSouth's parsed CSR functionality satisfies the nondiscrimination requirement of the 1996 Act. For example, the GPSC cites the failure of CLECs to present evidence regarding commercial usage of the functionality, while rejecting evidence that the defects in the

Finally, the *** report concludes only that a CLEC can interface with the parsed CSR functionality – not that the functionality is equivalent to that used by BellSouth's retail operations. *Id.* at 14.

¹² See KPMG Consulting, BellSouth-Florida Testing Evaluation, Status Meeting Minutes – February 27, 2002, at 5 (attached hereto as Attachment 2).

functionality (which BellSouth has admitted) render it unstable. GPSC at 13-14.¹³ In fact, the defects in the parsed CSR functionality render it so unstable that CLECs cannot develop the software necessary to use it. Moreover, the evidence shows that the defects characterized as “minor” have impeded CLECs from using the functionality, and have instead required CLECs to use cumbersome manual “workarounds.” AT&T at 9; WorldCom at 18 & Lichtenberg Decl. ¶¶ 140-45. *See also* Covad at 9-10 (describing wasted cost and time that CLECs must expend in using “work-arounds”). KPMG recently confirmed in its Florida testing that the defects in the parsed CSR functionality were “significant.” *See* KPMG Exception 157 at 1-2 (AT&T Bradbury/Norris Supp. Decl., Att. 61); DOJ Eval. at 10 (finding that “[a]lthough BellSouth and the Georgia PSC dispute the significance of the defects in this software, KPMG regards them as significant”).¹⁴

¹³ The GPSC appears to have overlooked the fact that BellSouth has presented no evidence of commercial usage of the parsed CSR functionality that would support a finding that the functionality is adequate, much less equivalent to that used by BellSouth’s retail operations. As previously stated, Birch has made clear that its usage of the functionality has been limited to four transactions (in a “test”). WorldCom, in addition to noting that the usefulness of the parsing functionality was “severely limit[ed]” by the defects admitted by BellSouth, states that it has not yet been able to test the functionality because it has concentrated its resources on other tasks, including entry into new markets. WorldCom at 2 n.1, 18 & Lichtenberg Decl. ¶ 141. *See also* CompTel, Conquest Aff. ¶ 1 (stating that ITC DeltaCom has not tested parsed CSR).

¹⁴ The implementation of “Telephone number migration” by BellSouth does not remove the need for equivalent parsing functionality. *See* AT&T Bradbury/Norris Supp. Decl., ¶¶ 67-68. Although the GPSC concludes that BellSouth has adequately implemented TN migration, its conclusion is based on BellSouth’s overstated and misleading data regarding the “usage” of TN migration and reductions in address-related errors that BellSouth attributes to TN migration. *See* GPSC at 8-10; AT&T Bradbury/Norris Supp. Decl. ¶ 68 & n.25; Birch at 24-25. The GPSC’s conclusion that TN migration has been adequately implemented is, at best, premature. As the GPSC observes, only on February 2, 2002, did BellSouth implement functionality designed to remove one of the problems that has existed in the TN migration functionality (the erroneous rejection of orders due to a “mismatch” between its RAG and CSR databases). GPSC at 9; AT&T at 11 n.10; WorldCom at 13-16. The evidence shows that even *after* the February 2 implementation, BellSouth continues to reject migration orders for reasons that are inconsistent with the business rules for TN migration. WorldCom at 16 & Lichtenberg Decl. ¶ 137.

Although the GPSC does not dispute that BellSouth fails to parse certain 11 fields of the CSR cited by AT&T, it reasons that other BOCs “do not provide these fields either.” GPSC at 15.¹⁵ However, as the record shows, at least one other BOC – Southwestern Bell – provides *all* of those fields. *See* AT&T Bradbury/Norris Supp. Decl., Att. 6. There is no reason why BellSouth cannot do the same, particularly since the data for these fields are already in BellSouth’s CSR. AT&T at 9. Many of these fields are critical to the ordering process; they include, for example, hunting information, which is required for orders for many business customers. *Id.* at 9; Bradbury/Norris Supp. Decl. ¶ 28.¹⁶

Finally, the evidence demonstrates that the GPSC is wrong in crediting BellSouth’s “additional evidence” that CLECs “have been able to automatically populate information supplied by BellSouth’s pre-ordering systems onto an LSR that will not be rejected by BellSouth’s systems.” GPSC at 11. The “letters from four parties” and the KPMG “integration testing” cited by the GPSC prove no such thing, as AT&T has previously shown. AT&T at 13-14. And BellSouth’s recently-made promise to provide “assistance” to CLECs in

¹⁵ The GPSC also reasons that the number of fields that BellSouth parses and returns exceeds the number of fields parsed and returned by Verizon. GPSC at 14. A comparison between RBOCs, however, is irrelevant to the issue of whether BellSouth is providing nondiscriminatory access to its OSS. The only relevant comparison is between the parsing functionality that BellSouth provides to CLECs and the functionality that it enjoys in its own retail operations.

¹⁶ In a recent *ex parte* letter responding to questions of Commission Staff, BellSouth suggested that data for some of these fields either do not, or may not, exist on the CSR. *See ex parte* letter from Kathleen B. Levitz to William Caton, dated March 14, 2002 (“March 14 *ex parte*”), Response to Question 5 (discussion of CSR 0652). BellSouth’s own application, however, acknowledges that the relevant information for each of these fields “may be obtained from the parsed and/or unparsed fields contained in” the CSR. Stacy/Varner/Ainsworth Decl. ¶ 84; *see also* GPSC at 15.

integrating pre-ordering and ordering functionalities is not only irrelevant to the issue of BellSouth's *current* compliance with its OSS obligations, but also illusory.¹⁷

Due Date Functionality. The comments also confirm that BellSouth does not provide CLECs with equivalent access to due dates. AT&T at 15-18; WorldCom at 28-29. BellSouth, for example, has not shown that as a result of the "fixes" that it made only last month, its due date calculator assigns due dates that are accurate and consistent with those requested by the CLEC. See AT&T at 15-17 (describing calculator's provision of due dates longer than those requested by CLECs, even after two previous "fixes" by BellSouth).

Furthermore, even assuming *arguendo* that the February 2002 "fixes" of the due date calculator have eliminated its provision of extended (and thus erroneous) due dates, BellSouth still has not shown that calculator now provides nondiscriminatory access. BellSouth's own data suggest that the calculator still does not work properly. BellSouth's Flow-Through Error Analysis Report for February 2002 identified 4,581 BellSouth-caused errors as "Due Date Could Not Be Calculated" (Error Code 9685) – indicating that the due date calculator failed to function *at all* for more than 4,500 orders during that month. See Attachment 3 hereto at 4.

The comments also show that, even when the calculator accurately assigns a due date, BellSouth does not consistently notify CLECs of the actual due date. As BellSouth has admitted, when a CLEC submits a supplemental order to change the due date that it originally requested on an LSR, BellSouth returns a FOC listing the *originally-requested* due date – even when BellSouth's systems accept the supplemental order and BellSouth provisions the order on

¹⁷ See *Michigan 271 Order* ¶¶ 55, 179; Network Telephone at 7-9 (describing the "extremely unhelpful" assistance that BellSouth rendered to Network in attempting to implement its TAG

the revised due date. *See* March 14 *ex parte* (Response to Question 9); WorldCom at 28-29. As a result, CLECs must perform the time-consuming task of manually consulting BellSouth's order status systems to determine whether the due date was revised as requested. WorldCom at 28-29. Although BellSouth has asserted that it would implement a "fix" to this problem on March 23, 2002, it is uncertain whether BellSouth has done so, or whether the "fix" will be effective. *Id.*¹⁸

The failure of BellSouth to ensure that the correct due date appears on FOCs for supplemental orders requesting revised due dates is a denial of nondiscriminatory access. Unlike BellSouth's retail operations, a CLEC "cannot be confident" that the revised due date that it requested (and promised to their customers) will be the one that BellSouth actually assigns. *See Louisiana II 271 Order* ¶ 104. As long as CLECs are receiving incorrect due dates on FOCs and are thus required to conduct status inquiries to determine the actual revised due date, parity of access cannot be said to exist.

Finally, in addition to the deficiencies in its due date calculator, BellSouth denies parity of access to due dates because it fails to return FOCs on partially-mechanized orders on a timely basis. *See Louisiana II 271 Order*, ¶¶ 104-105. The evidence shows that BellSouth takes, on average, 18 hours to return such notices to CLECs. *See* AT&T at 18 & Bradbury/Norris Supp. Decl. ¶¶ 80, 128.¹⁹ Because BellSouth does not provide CLECs with the actual due date

interface). In any event, BellSouth's promise to offer assistance belies its claim that CLECs already have the ability to develop parsing functionality independently. AT&T at 12-13.

¹⁸ BellSouth has acknowledged that: (1) the listing of the original due date on a FOC returned in response to a supplemental order requesting a revised due date is caused by a defect in its due date calculator, and (2) it was advised of the problem by WorldCom in January 2002. *See* March 14 *ex parte* (Response to Question 9); WorldCom at 29 & Lichtenberg Decl. ¶ 13. Thus, BellSouth's assertion in its Application that its February 2002 "fixes" were "designed to correct all known system defects in the due date calculator" was plainly false. *See* Application at 32-33.

¹⁹ The GPSC's assertion that BellSouth's performance in returning FOCs and rejection notices on manually processed orders "continues to be very good" is contrary to the evidence, which

until a FOC is generated, due dates for CLEC customers are often later than those for BellSouth's retail customers. *Id.* BellSouth's failure to provide timely FOCs on partially mechanized orders is only one component of its overall failure to provide timely, accurate, and complete status notices, which includes failure to provide jeopardy notices, incomplete FOCs, untimely notifiers, and erroneous order rejects.²⁰

2. The Comments Confirm That BellSouth Continues To Place Excessive Reliance on Manual Processing.

The comments demonstrate that BellSouth is denying nondiscriminatory access to its ordering and provisioning functions as a result of its excessive reliance on manual processing that is the product of its own making. AT&T at 17-19; Birch at 16-18; Network at 4-5; WorldCom at 30-32. In December 2002, for example, more than 20 percent of all electronically

shows that BellSouth takes 18 hours, on average, to return both types of notices on partially mechanized orders. GPSC at 24; AT&T at 18.

²⁰ AT&T Bradbury/Norris Supp. Decl. ¶¶ 127-131; Birch at 21-23 (failure to provide jeopardy notices); KMC at 3-4 (incomplete FOCs); US LEC at 37 (untimely notifiers). In addition, BellSouth's systems often reject orders erroneously. *See* Network at 5 (more than 30 percent of clarifications sent to KMC are invalid); KMC at 4 & McLaughlin Aff. ¶ 4 (BellSouth "has routinely rejected KMC orders in error"); WorldCom at 30, 32 (BellSouth continues to transmit erroneous manual rejection notices). BellSouth's deficient provision of status notices is compounded by its refusal to provide CLECs with billing completion notices ("BCNs") – which, unlike the "provisioning" completion notices ("PCNs") that BellSouth currently provides, would advise a CLEC that posting of the order has occurred in the BellSouth billing systems. *See New York 271 Order*, ¶¶ 187-188 (finding that Verizon provides both BCNs and PCNs); AT&T Bradbury Opening Decl. ¶ 148. Without BCNs, CLECs (unlike BellSouth's retail operations) do not know when they may properly begin billing the customer, and double-billing may therefore occur. Bradbury Opening Decl. ¶ 148; WorldCom at 25-26 & Lichtenberg Decl. ¶¶ 32-34. The need for BCNs is confirmed by BellSouth's disclosure (in comments filed last week with the Florida PSC) that only 80 percent of CSRs are posted within 1 day, and only 93 percent of CSRs are posted within 3 days. *See Post-Workshop Comments of BellSouth Telecommunications, Inc.* filed March 18, 2002, in FPSC Docket No. 960786-L ("BellSouth Workshop Comments"), at 7 (attached hereto as Attachment 4) Although BellSouth stated in its comments last week that it would support the inclusion of a BCN in the change control process for prioritization by the CLECs (*id.*), its promise is illusory at this stage, particularly given BellSouth's total control over prioritization and implementation of change requests. BellSouth's promise is also questionable

submitted LSRs, and more than 25 percent of all LSRs, fell out for manual processing because of design decisions by BellSouth or BellSouth system errors. AT&T at 17. BellSouth's flow-through performance in January and February 2002 has not improved, as demonstrated in the charts attached hereto as Attachment 5.²¹

Given BellSouth's own retail flow-through rate of nearly 100 percent, BellSouth's high level of manual processing of CLEC orders is plainly a violation of its OSS obligations. Manual processing results in the untimely return of status notices, the assignment of due dates to CLEC customers later than those assigned for BellSouth's retail customers, an increased risk of input errors and delays (and a corresponding risk of errors and delays in provisioning), and an increase in costs for CLECs and consumers. AT&T at 18; WorldCom at 32 & Lichtenberg Decl. ¶ 56.

The denial of parity caused by the high rate of manual processing is all the more striking because, as shown in the comments, many orders that fall out for manual processing are relatively simple orders – and therefore fall out only because BellSouth has designed them to do so. *See, e.g.*, Birch at 15-16; WorldCom at 30-32. For example, BellSouth manually processes all orders for CLEC customers who had voice mail or call forwarding as part of their retail

in view of its previous refusal to take action on a change request for a BCN submitted in June 2001. *See* AT&T Bradbury/Norris Supp. Decl. ¶ 149.

²¹ *See also, e.g., ex parte* letter from Kathleen B. Levitz to Magalie Roman Salas, dated March 1, 2002 ("March 1 MSS *ex parte*"), Attachment at 47 (describing flow-through rates for January 2002) *with* Varner Supp. Aff., Exh. PM-11 (describing flow-through rates for December 2001). BellSouth's "CLEC Error Excluded" flow-through rates for residential resale orders and business resale orders in January 2002 continued to fall considerably short of the applicable benchmarks established by the Georgia and Louisiana PSCs. *Id.* Although the January "CLEC Error Excluded" rate of 85.5 percent for UNE orders in January exceeded the applicable benchmark of 85 percent, January marked the first (and, thus far, only) month in which BellSouth has actually met that benchmark. As Birch states, "one month of exceeding the 85% benchmark can *hardly* constitute a convincing case by BellSouth." Birch at 15 (emphasis in original).

service, even though there appears to be no reason why the customer's previous use of those features should require the order to be manually processed. WorldCom at 30-32.²²

In view of BellSouth's continuing excessive rates of manual processing, the GPSC errs in concluding that "BellSouth has adequately resolved any concerns about its manual handling of CLEC orders." GPSC at 23. The GPSC itself observes that "BellSouth's flow-through performance continues to fall short of the Commission's benchmarks," but rationalizes that the flow-through rates "have continued to improve." *Id.* at 16. As AT&T has previously shown, however, the rate of BellSouth-caused manual fall-out did *not* improve during 2001 – and even the flow-through rates cited by the GPSC showed no, or little, improvement during the year. AT&T at 17-18 & Bradbury/Norris Supp. Decl. ¶¶ 98-102.

The GPSC also asserts that "BellSouth's flow-through rates should continue to improve, particularly given the work of the Flow-Through Improvement Task Force, which was created by this Commission . . . and which now operates as a subcommittee of the CCP." GPSC at 17. Reliance on promised or possible future improvements in flow-through performance, however, is irrelevant for purposes of determining BellSouth's *current* compliance with its OSS obligations. *New York 271 Order* ¶ 37. Furthermore, the work of the Flow-Through

²² BellSouth, in fact, admitted yesterday in an *ex parte* letter that it intends to implement full flow-through capability for such orders by May 2002. *See ex parte* letter from Kathleen B. Levitz to William Caton, dated March 27, 2002, at 4. Although BellSouth contends in its letter that it designed these orders to fall out in response to CLEC complaints that UNE-P conversions had caused some customers to lose call forwarding and voice mail capabilities, it offers no explanation as to why it did not simply fix directly the underlying root cause of the problem. *Id.* Moreover, although BellSouth asserts that the problem has had a minimal impact on mechanized UNE-P LSRs (*id.* at 5), the data that it describes as "all CLEC mechanized UNE-P LSRs" are actually all electronically submitted non-LNP LSRs. According to BellSouth's flow-through reports, the actual number of mechanized UNE LSRs submitted in December 2001 and January 2002 were 119,789 and 145,792, respectively – only one-third of the totals described by BellSouth. *Id.* Using these data, the percentages of affected orders are 1.8 percent and 1.5

Improvement Task Force ("FTTF") provides no basis for the GPSC's optimism. The GPSC itself acknowledges that only four flow-through features have been implemented thus far in 2002, four others are "scheduled" for implementation in April, and 14 others are "expected to be implemented" later in the year. GPSC at 17.

Moreover, the GPSC's description of the FTTF's implementation schedule is incorrect and out-of-date. According to BellSouth's most recent implementation schedule, which was issued earlier this month: (1) only four flow-through features, and part of another feature, have been implemented in recent months; (2) 10 features have been scheduled for implementation between May 2002 and mid-2003; and (3) 18 flow-through features have not even been scheduled for implementation.²³

The comments confirm that the FTTF has had little impact on the flow-through capabilities of BellSouth's systems. See Birch at 18; WorldCom Lichtenberg Decl., ¶ 62. BellSouth itself has stated in recent months that any significant improvement in manual fall-out rates in the foreseeable future is unlikely. AT&T at 19 & Bradbury/Norris Supp. Decl. ¶ 104. The volumes of manually processed orders will only increase, and BellSouth's already-inadequate performance in manually processing CLEC orders will only worsen in the future, as CLECs ramp up their market entry. AT&T at 19.

percent – and even these percentages understate the actual percentages of UNE-P orders affected, because UNE-P orders are a subset of UNE orders.

²³See electronic mail message from BellSouth Change Control to CLECs, dated March 6, 2002 (attached hereto as Attachment 6). Of the 10 flow-through features scheduled for implementation by BellSouth, two are scheduled for implementation on April 7, four are scheduled for implementation on May 18-19 (as part of Release 10.5), one is scheduled for implementation on July 13-14 (as part of Release 10.6), two are scheduled for implementation on November 16-17 (as part of Release 11.0), and one is scheduled for implementation as part of LSOG 7 (which will not occur until at least mid-2003). *Id.* (list of "Scheduled Items"). Although BellSouth lists eight features on its list of implemented items, two of those features

In its third-party testing in Florida, KPMG continues to find deficiencies in the performance of BellSouth's Local Carrier Service Centers ("LCSCs"), which are responsible for manually processing CLEC orders. *See* Bradbury/Norris Supp. Decl. ¶ 117. Most recently, on March 4, 2002, KPMG issued an observation finding that the LCSC provided no responses to LSRs that KPMG had submitted manually, even though the LCSC should have issued clarifications in each case. KPMG found that such failures "could cause CLECs to experience unnecessary delays in processing service requests" and increased operating costs, resulting in customer dissatisfaction.²⁴

have been temporarily withdrawn, and a third is still in testing. *Id.* (list of "Implemented Items").

²⁴ *See* KPMG Observation 171, dated March 4, 2002 (attached hereto as Attachment 7). The LCSC's inadequate performance is a product both of its heavy workload of manual processing, and of BellSouth's failure to establish adequate procedures and training for the LCSC. For example, in a still-open exception, KPMG found that the "Call Analysis Sheet" used by a representative at the LCSC to record details of each incoming call from a CLEC is not made readily available to other LCSC representatives. Thus, when a CLEC calls to follow up on an issue that it previously discussed with an LCSC representative, and that representative is unavailable, other representatives will lack the information necessary to assist the CLEC – thereby delaying resolution of the CLEC's problem (and, in all likelihood, provisioning of service). *See* KPMG Exception 110 (Bradbury Opening Decl., 113 & Att. 31. In an amendment to that exception issued last month, KPMG found that the call logging and tracking procedures at the LCSC did not even enable BellSouth's managers to determine the status of issues or escalations at any given time. KPMG Amended Exception 110, issued February 13, 2001 (attached hereto as Attachment 8). In its recent response to this amended exception, BellSouth acknowledged that its resale service representatives at the LCSC still use paper versions of call analysis sheets, while its UNE service representatives use on-line versions. BellSouth did not dispute that neither of these versions is readily accessible to all LCSC service representatives. BellSouth's Response To KPMG Amended Exception 110, dated March 1, 2002 (attached hereto as Attachment 9). To make his or her own call analysis sheets available to other LCSC representatives, the individual representative would be required to re-key the sheets manually into BellSouth's systems. The manual nature of that process would increase the risks of process failures and additional delays in resolving CLEC inquiries or resubmitted CLEC orders. *See also* Covad at 10-12 (describing delays in Covad's orders and the "wasted work time and management efforts" expended by Covad to resolve problems with the LCSC, due to the LCSC's deficient organizational procedures and personnel structure).

3. The Comments Confirm That BellSouth's Poor Rates of Service Order Accuracy and Provisioning Accuracy Continue To Deny Parity of Access.

BellSouth's deficient flow-through performance is compounded by its poor rates of service order accuracy and provisioning accuracy. Like KPMG's third-party testing in both Florida and Georgia, the comments confirm that BellSouth frequently commits errors in re-entering manually processed CLEC orders into its systems, and in provisioning CLEC orders. AT&T at 20-21, 41; Covad at 5-7; KMC at 10; Network at 5-6; USLEC at 7-10, 36; WorldCom at 23-28; Xspedius at 6-8.

The comments show that BellSouth renders poor performance in entering CLEC ordering data into its systems. WorldCom, for example, states that "BellSouth's manual processing likely also is the primary (or exclusive) cause" of its inaccurate provisioning of WorldCom's orders, including the assignment of tens of thousands of customers to the wrong intraLATA provider and the loss of dial tone on UNE-P migrations. WorldCom at 23-24, 26-28, 32. Similarly, errors by BellSouth service representatives in manually retyping AT&T's UNE-P orders are the likely cause of significant service disruptions experienced by AT&T's customers. AT&T at 41 & Seigler Supp. Decl. ¶ 15. *See also, e.g.,* Xspedius at 5-6 (stating that customer conversion dates on FOCs are frequently missed because BellSouth fails to input the FOC date into its systems).

The comments also demonstrate that the BellSouth frequently commits errors in provisioning orders, resulting in increased costs to CLECs and customer dissatisfaction. AT&T at 21; Covad at 5-7; KMC at 10-11; Network at 5-6; US LEC at iii, 7-10, 13-15; WorldCom at 23-28. Numerous UNE-P customers have experienced service outages or disruptions during conversions – even though such conversions involve only a simple record change. AT&T at 40-

41; Network at 5-6; WorldCom at 26-27. The evidence also shows that BellSouth has also assigned thousands of WorldCom's customers to the wrong intraLATA provider (and has taken no action to resolve the problem), and provisioned features incorrectly on a significant number of CLEC orders. AT&T at 41-42; WorldCom at 24-25.

Finally, the comments show that BellSouth fails to provision loops accurately. For example, BellSouth makes severe, repeated errors in provisioning UCL-ND loops – which is not surprising, since the record shows that BellSouth's technicians call CLECs such as Covad “in confusion about how to provision this loop and what work steps to follow.” Covad at 5-7. Indeed, when BellSouth provisions loops, outages occur at a rate “so endemic as to prevent UNE-loop competition.” KMC at 10-11 (stating that as many as one-third of KMC's loops have experienced outages after being provisioned by BellSouth).

US LEC has similarly experienced “hundreds” of outages on special access facilities that BellSouth provides – and BellSouth has admitted that 50 percent of those outages were the direct result of “human error.” US LEC at iii, 7-10, 13-15. The comments of Xspedius show that BellSouth also frequently fails to provide the complete number of loops requested on LSRs, prematurely disconnects customers, and fails to port customers or process conversions of customers on the scheduled due date. Xspedius at 4-8.

Although it does not address the issue of provisioning accuracy, the GPSC concludes that “BellSouth has improved its service order accuracy performance.” GPSC at 18. This conclusion is belied by the real-world experience described in the comments, and by the results of KPMG's testing. Moreover, the GPSC bases its finding of “improvement” on BellSouth's reported rates of service order accuracy for September through December 2001 – even though, as the GPSC acknowledges, BellSouth *changed* its methodology for calculating

service order accuracy beginning with the month of November 2001. *Id.* at 18-19 & n.17. As the DOJ states, BellSouth made these changes unilaterally, “without prior approval of the Georgia PSC” and “without notice to or input from interested parties,” casting a long shadow on BellSouth’s claim of improved service order accuracy. DOJ Eval. at 13-14. *See also* AT&T at 20; Birch at 11-12.²⁵ That fact alone renders unreliable any finding or claim of “improvement” in BellSouth’s performance. *See* AT&T at 20; Birch at 12. *See also* DOJ Eval. at 13 (“The significance of the improvements in BellSouth’s service order accuracy is unfortunately obscured, however, by significant changes in how BellSouth has measured accuracy starting with November data”).

BellSouth’s recent *ex parte* filings make clear that its new methodology is unreliable in other respects, which are fully described below in Part II. Most notably, BellSouth includes *fully mechanized* orders in its calculation – and thus does not restrict its measurement to manually processed orders.²⁶ The inclusion of fully mechanized orders “completely skews the

²⁵ BellSouth did not provide any type of public notification of the changes in its methodology until it filed a letter with the GPSC dated February 1, 2001 – and filed the letter only because it was directed to do so by the GPSC Staff. GPSC at 19 n.17; DOJ Eval. at 13 n.55. Contrary to the GPSC’s assertion, these changes in BellSouth’s methodology were not “discussed during industry workshops in [GPSC] Docket 7892-U.” GPSC at 19 n.17; Bursh/Norris Supp. Reply Decl., ¶ 11. Nor did BellSouth discuss the changes during the GPSC’s six-month collaborative workshops – where, as Birch points out, all changes in performance measurements were supposed to be addressed – even though the workshops continued through mid-December 2001. Birch at 11-12. Moreover, although BellSouth claimed in its February 1 letter that it was sending copies of the letter to the CLECs, it does not appear that AT&T received a copy of the letter. AT&T became aware of the changes only when it reviewed BellSouth’s application. Bursh/Norris Decl. ¶ 106. That is why AT&T stated in its opening comments that BellSouth’s application “mark[s] the first occasion on which BellSouth notified CLECs of this change in methodology.” Bradbury/Norris Supp. Decl. ¶ 122.

²⁶ *See ex parte* letter from Kathleen B. Levitz to Magalie Roman Salas, dated March 1, 2002 (“March 1 SOA *ex parte*”). According to the data provided in the March 1 SOA *ex parte*, 383 (or more than 35 percent) of the 1,068 service orders sampled by BellSouth for January 2002 in Georgia were fully mechanized orders. *Id.*

sample, as fully mechanized orders should very rarely contain service order errors.” Birch at 10-11.

BellSouth’s March 15 *ex parte* letter on service order accuracy – which calculates the rates for September and October 2001 using its “new” methodology – confirms the unreliability of its claim of improved performance. As the DOJ finds, “These results indicate that for those months, performance is substantially better under the new method than the performance BellSouth had reported pursuant to the old method.” DOJ Eval. at 13 n.57. For example, the service order accuracy rate for non-dispatch, non-designed UNE orders (less than 10 circuits) for September 2001 rose from 79.33 percent under the “old” methodology (for Georgia) to 98.80 percent (regionwide) under the “new” methodology – an increase of nearly 20 percentage points. *See ex parte* letter from Jonathan B. Banks to William Caton, at 9 (dated March 15, 2001) (“March 15 SOA *ex parte*”). Similarly, the service order accuracy rate for dispatched, non-designed UNE orders for September rose by nearly 10 percentage points under the new methodology, to 94.29 percent. *Id.* Thus, most of the rates for these months now approach or exceed the applicable 95 percent benchmark under the “new” methodology. *Id.*

Given these substantially higher rates that the new methodology produces for months prior to November 2001, BellSouth cannot plausibly claim that its performance has improved. Birch is clearly correct that BellSouth simply changed its methodology so that “[it] will likely never perform in a manner that does not meet or exceed the established [95 percent] benchmark.” Birch at 10.

Even leaving aside the vast increase in previously reported rates using BellSouth’s new methodology, BellSouth’s March 15 *ex parte* undercuts the basis for its claim of improved performance. In that letter, BellSouth describes, at length, the reasons why the

methodology that it used for months prior to November 2001 was deficient, incorrect, and unreliable. *See* March 15 SOA *ex parte* at 2-4. But BellSouth cannot have it both ways: it cannot claim improvement on the basis of rates that it had reported for months prior to November, while contending that the method used to calculate them was unreliable.

Finally, the service order accuracy data that BellSouth recently filed with this Commission provide further evidence that its claim of improved performance remains unproven. In January 2002, BellSouth failed to meet the 95 percent benchmark for 7 of the 10 resale submetrics – a reversal of its performance in December, when it exceeded the benchmark for 8 of the 11 resale submetrics for which it reported data. *See* March 1 MSS *ex parte* at 9; Application at 26. The DOJ's Evaluation correctly states that "BellSouth's ability to sustain its improved performance [in service order accuracy] deserves close examination." DOJ Eval. at 12. In view of the January results, BellSouth has not shown that ability. Instead, the reported data for December 2001 on which BellSouth relies must be regarded as an "aberration" until BellSouth demonstrates "repeated compliance" with the PSCs' 95 percent benchmark. US LEC at 36.

B. The Comments Confirm That BellSouth's Change Control Process Does Not Give CLECs a Meaningful Opportunity To Compete.

In determining whether a Section 271 applicant has met its obligation to provide efficient competitors with a meaningful opportunity to compete, the Commission gives "substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time." *Rhode Island 271 Order*, App. D, ¶ 40. The comments demonstrate that BellSouth still has not established, or adhered to, an adequate change management process. Nor has BellSouth provided CLECs with the "stable testing environment that mirrors production" which CLECs need to have a meaningful

opportunity to compete. *See id.*, App. D, ¶ 42; *Texas 271 Order* ¶ 132; *New York 271 Order* ¶ 109.

1. BellSouth Has Neither Implemented, Nor Followed, an Adequate Change Control Process.

The comments confirm that, even with the modifications that BellSouth has recently made (or promises to make) in its change control process (“CCP”), the CCP remains fundamentally flawed. AT&T at 21-27; Birch at 27-29; CompTel at 5-6 & Conquest Aff. ¶¶ 5-6; Covad at 3-10; WorldCom at 4-23. BellSouth’s modifications do not alter the core deficiencies in the CCP: (1) BellSouth’s “veto power” over all proposed changes in its OSS and its power to determine what change requests will be implemented, what the final prioritization of change requests will be, and when the requests actually will be implemented; and (2) BellSouth’s persistent disregard of the change control process in practice. *Id.*

Similarly, the DOJ repeatedly cites change management, and the degree of BellSouth’s commitment to proper change management, as one of its principal concerns about BellSouth’s Application. DOJ Eval. at 2, 7-8, 10, 13-14, 16, 21-22. The DOJ correctly notes that, despite BellSouth’s professed commitment to improve the change control process, BellSouth’s implementation of certain recent “enhancements” to its OSS “appears to have violated important change management principles.” *Id.* at 7.

Thus, in discussing BellSouth’s implementation of telephone number migration (where BellSouth notified CLECs only on the day before the November 3 implementation that the functionality would not work for approximately 30 percent of CLEC orders unless the CLECs continued to provide address information on such orders), the DOJ concludes that “[T]he procedures by which BellSouth implemented this change and other software upgrades . . . raise questions about BellSouth’s consistency in adhering to proper change management principles.”

DOJ Eval. at 8. The DOJ also finds that, like TN migration, the parsed CSR functionality “was introduced without adequate testing and with defects,” and was “marked by [BellSouth’s] failure to provide required information to CLECs regarding the effects of the upcoming change and, apparently, by its failure to adequately perform internal testing.” *Id.* at 16. Finally, DOJ finds that BellSouth changed its methodology for calculating service order accuracy “without prior approval of the Georgia PSC or notice to the CLECs” – raising the question of how this Commission and state commissions “can be expected to determine that BellSouth has continued to meet its obligations pursuant to Section 271 if BellSouth can unilaterally change metrics without notice to or input from interested parties.” *Id.* at 13-14.²⁷

BellSouth’s continuing disregard of the CCP belies the GPSC’s assertion that “the CCP is an effective means by which BellSouth communicates with CLECs regarding the performance of and changes to the OSS that affect interconnection and market access.” GPSC at 25. The ineffectiveness of the CCP (even taking into account BellSouth’s actual or promised modifications to that process) is further confirmed by the backlog of more than 125 change requests, including numerous defect change requests, which is described in the comments. AT&T at 23; Birch at 28-29; Covad at 8-10; WorldCom at 7 & Lichtenberg Decl. ¶¶ 100-104. Some of these requests were originally submitted in 1999 or 2000 but *still* have not been scheduled for implementation. AT&T at 23; Birch at 28; Covad at 8; WorldCom Lichtenberg

²⁷ The comments of CLECs similarly describe: (1) BellSouth’s failure to provide the documentation for the parsed CSR functionality in accordance with the five-week advance notice period required by the CCP; (2) BellSouth’s implementation of TN migration functionality with only one day’s advance notice to CLECs that the functionality would not work for approximately 30 percent of CLEC orders (and without having provided documentation at least five weeks in advance of implementation); and (3) BellSouth’s unilateral adoption of a new methodology for calculating service order accuracy without prior notification to the state commissions or other interested parties. *See, e.g.*, AT&T at 20 & Bradbury/Norris Supp. Decl. ¶¶ 17, 71, 122; Bradbury Reply Decl. ¶ 12; Birch at 11; WorldCom at 13, 17.

Decl. ¶ 102. By contrast, as BellSouth has acknowledged and the comments confirm, BellSouth has implemented only a limited number of change requests. As WorldCom states, “the functionality most needed by CLECs generally does not get implemented or is delayed for years.” WorldCom at 7.²⁸

Notwithstanding these facts, the GPSC concludes that “BellSouth has made a good-faith effort to improve the prioritization and implementation of change requests through the CCP.” GPSC at 27. Regardless of whether BellSouth’s effort is in “good faith,” however, the various bases that the GPSC cites for its conclusion do not alter the core deficiencies in the CCP. For example, BellSouth’s willingness to provide status reports and schedules for release implementation does not affect its continuing control over the prioritization and implementation of change requests. *See id.*; AT&T Bradbury/Norris Decl. ¶ 142.²⁹ Furthermore, the GPSC is incorrect in relying on BellSouth’s promise to allocate 40 percent of its annual release capacity

²⁸See AT&T at 23-24 (describing BellSouth’s admission that, as of November 2001, it had implemented 32 CLEC-initiated change requests within the last three years and 33 BellSouth-initiated change requests within the last two years, and that it took an average of 164 days to implement a CLEC’s change request after submission); WorldCom at 7 (BellSouth has implemented only 17 change requests for additional functionality that CLECs have prioritized since June 2000).

²⁹ In a recent submission to the Florida PSC, BellSouth alleged that the CLECs have inconsistently stated on some occasions that they wish their red-lined version of the CCP to be the basis for discussions with BellSouth, while testifying at a workshop of the FPSC that they desire the adoption of Verizon’s change management process. BellSouth Workshop Comments (attachment 4 hereto) at 12-13. BellSouth’s assertion is a distortion of the record. As the document that BellSouth attached to its recent Florida comments demonstrates, the CLECs have consistently requested that the red-lined version (which includes significant portions of the Verizon process) be the basis for discussions concerning changes to the CCP. *Id.*, Exh. 3 at 8. The CLECs reiterated that point in the Florida workshop, while contrasting the cooperative aspects of the Verizon process with BellSouth’s unilateral decisionmaking under its CCP. *See* Transcript of Workshop in FPSC Docket Nos. 960786B-TP and 981834-TP, Vol 2 (February 18, 2002), at 217-218, 225, 241-244. The comments of the CLECs here also make clear their desire to use the red-line version as the basis for discussions. *See, e.g.,* Birch at 29; WorldCom at 20-23.

to “CLEC change requests and/or CLEC regulatory driven mandates.” GPSC at 27-28.³⁰ As the comments demonstrate, this proposal is meaningless, both because it represents no change in the current allocation and because BellSouth alone would determine what change requests would be included in the 40 percent allocation. In fact, this rigid allocation formula could serve to limit – not expand – the implementation of changes to the OSS that CLECs need. AT&T at 24; CompTel at 6; Covad at 9; WorldCom at 8-9, 22.³¹ It is also highly questionable whether BellSouth could allocate even 40 percent of its capacity to CLEC requests, given the substantial amount of release capacity that it has been required to devote to correcting the numerous defects in its OSS. WorldCom at 8-9. For example, the various releases that BellSouth has implemented in 2002 to date have been dominated by defect corrections (47 through March 25, 2002).

BellSouth’s promise to implement the “CLECs’ current top 15 change requests” is equally unpersuasive. *See* GPSC at 27. As the comments point out, BellSouth’s

³⁰ The GPSC asserts that, although BellSouth presented its “40% Solution” to the CCP, “the participating CLEC members declined to vote on certain critical aspects of BellSouth’s proposal, electing instead to present release capacity proposals to this Commission as part of its ongoing evaluation of the Change Management Process.” GPSC at 27-28. The CLECs, however, did not “elect” to present their red-lined version of the CCP to the GPSC, but (as the GPSC acknowledges) filed that document pursuant to the request of the GPSC Staff. *Id.* at 26. Moreover, although AT&T suggested at the time of the CLECs’ filing that BellSouth and the CLECs discuss the CLECs’ proposed changes in CCP meetings in parallel with the GPSC’s proceedings, BellSouth refused to do so. AT&T at 24-25 n.26 & Bradbury/Norris Supp. Decl. ¶ 159.

³¹ The comments further show that BellSouth’s more recent allocation proposal – which would allocate to CLEC change requests “at least 50 percent” of release capacity remaining after allocation of regulatory changes, industry standard changes, and defect changes – is at least as flawed as the original “40% Solution” cited by the GPSC. In fact, the “50/50 Solution” could leave CLECs in a *worse* position than the unconditional allocation described in the “40% Solution.” AT&T at 25; Covad at 9; WorldCom Lichtenberg Decl. ¶ 121. The GPSC’s comments do not even address the “50/50 solution,” even though BellSouth made that proposal in the “green-lined” version of the CCP that it filed with the GPSC on February 15. *See* GPSC at 26.

“commitment” remains primarily a promise to perform in the future. Most of the “top 15” change requests (which date back to 1999 and 2000, and which were all prioritized in April 2001) have not been implemented – and some have not even been scheduled for implementation. Birch at 28; Covad at 8; WorldCom Lichtenberg Decl. ¶ 99. In any case, BellSouth’s promise simply reflects its exclusive power to determine what change requests will be implemented, and when. AT&T at 26. Even if BellSouth keeps its promise, the implementation of 15 change requests will have little effect on the “churning black hole” of backlogged change requests. Birch at 29.

Finally, the GPSC suggests that any deficiencies in the CCP can be resolved in its ongoing evaluation of the change control process. *See* GPSC at 26-28. Although AT&T and the other CLECs hope that the CCP can be improved through the GPSC’s review, the issue here is whether the CCP *currently* gives CLECs a meaningful opportunity to compete. The possibility that the CCP *might* do so in the future as a result of the GPSC’s review is therefore not only speculative, but irrelevant. AT&T at 29-30.³²

2. BellSouth Fails To Provide an Adequate and Stable Test Environment.

A robust test environment that mirrors (but is separate from) the production environment is critical to CLECs so that they “may be able to ensure that their software

³² AT&T notes that although the CLECs filed a red-lined version of the CCP with the GPSC on January 30, 2002, and BellSouth filed a “green-lined” response on February 15, 2002, the GPSC has taken no action on either proposal, but is still reviewing them. GPSC at 26. BellSouth, however has already failed to comply with one the commitments it made in the green-lined version of the CCP that it filed with the GPSC. Although BellSouth agreed in the green-lined version to provide release capacity information to CLECs, it refused to do so when CLECs requested it at a prioritization meeting on March 27, 2002, on the ground that BellSouth and the CLECs had not reached agreement regarding the number of releases. However, BellSouth’s green-lined version does not condition the provision of release capacity information on such agreement.

interfaces correctly with BellSouth's OSS, particularly as changes are implemented." DOJ Eval. at 14. The comments demonstrate, however, that BellSouth's testing environment for CLECs continues to be inadequate. AT&T at 27-28; Birch at 27-28; WorldCom at 19-20.

For example, the comments make clear that BellSouth's "CAVE" production environment fails to mirror the production environment. BellSouth continues to insist that CLECs using CAVE submit order-using codes identifying the transactions as *BellSouth*-originated, not CLEC-originated. As a result of this requirement, CLECs must either reprogram their systems or enter the fictitious codes manually on their LSRs. Either method requires a substantial dedication of time and resources. More importantly, because they are forced to use BellSouth's ordering codes, the CLECs have no assurance that orders with their own codes will be submitted successfully in the production environment. AT&T at 27-28 & Bradbury/Norris Supp. Decl. ¶ 171; Bradbury Opening Decl. ¶ 215; WorldCom at 19-20.

The GPSC's analysis of the BellSouth testing environment does not address the failure of CAVE to *mirror* the production environment, but focuses instead on the issue of whether CAVE is *separate* from the production environment. GPSC at 24. Furthermore, although the GPSC concludes that BellSouth has now included its LENS interface in CAVE, the GPSC's conclusion is based on BellSouth's current beta testing with only two CLECs and BellSouth's *promise* to make testing of LENS in CAVE fully available to all CLECs *this month*. *Id.* at 25. Whether BellSouth has fully, and successfully, met that commitment is still uncertain. Birch, one of the two CLECs performing beta testing of LENS in CAVE, states that it remains "uncertain of how BellSouth will handle defects identified in the testing environment," because Birch used a test environment that had been rolled into production on January 5, 2002 – and thus "was geared for success by design." Birch at 27. Even if LENS is included successfully in

CAVE, BellSouth still improperly excludes its RoboTAG™ interface from that test environment, forcing CLECs using RoboTAG™ to perform live testing on their LSRs to find programming errors by BellSouth associated with the new releases. AT&T at 28.

The CLECs' need for an adequate test environment is particularly significant in view of BellSouth's failure to conduct sufficient internal testing before implementing its releases. Earlier this month, for example, KPMG found in its Florida OSS testing that "BellSouth did not completely test code changes for Releases 10.2 and 10.3 prior to these releases going into production," and implemented those releases with "no apparent plan to mitigate the adverse impact of reduced pre-release testing." KPMG Exception 157 at 1, 3; DOJ Eval. at 10 & n.39, 16 & n.68; AT&T Bradbury/Norris Supp. Decl. ¶ 175 & Att. 61. As a result, BellSouth identified and published more than 40 defect change requests for these releases. KPMG Exception 157 at 1-2.

Releases 10.2 and 10.3 are only the latest of numerous instances in which BellSouth implemented software having serious flaws. Those flaws had a negative impact on the CLECs' ability to efficiently execute transactions with BellSouth, because BellSouth had not provided a test environment that would have enabled them to identify the defects before the proposed releases were actually implemented. *See* AT&T Bradbury/Norris Decl. ¶ 175; KPMG Exception 157 at 3. The evidence demonstrates that BellSouth still has not provided such an environment.

II. BELLSOUTH'S PERFORMANCE DATA AND REMEDY PLANS ARE INADEQUATE TO SHOW THAT BELLSOUTH HAS SATISFIED ITS SECTION 271 OBLIGATIONS.

The comments confirm that: (1) the performance measurements on which BellSouth relies to support its application do not accurately capture actual performance; (2) BellSouth's performance data are unreliable and cannot reasonably be considered a reflection of

BellSouth's actual performance; (3) the metrics audits that have been conducted to date do not demonstrate that BellSouth's data are trustworthy; (4) even BellSouth's incomplete and inadequate data, in combination with the CLECs' data, show that BellSouth is not satisfying its statutory obligations; and (5) BellSouth's performance remedy plans cannot possibly serve as effective deterrents against future backsliding.³³ The contrary conclusions reached by the GPSC and LPSC are clearly not based on the record evidence.

Against this array of evidence, the Georgia and Louisiana PSCs reaffirm their initial recommendations for approval of BellSouth's application.³⁴ However, the PSCs' analyses ignore or diminish the significance of this pool of evidence or accept at face value BellSouth's misguided explanations and rationalizations. The PSCs also rely on BellSouth's promises to take corrective steps to cure existing deficiencies or the hopeful expectation that the remedy plans currently in effect will deter discriminatory conduct. *See* GPSC at 19, 27; LPSC at 2. Any such reliance on BellSouth's unfulfilled promises is plainly contrary to the explicit terms of the Telecommunications Act. Moreover, the substantial structural defects in the remedy plans preclude them from serving their intended purpose. In all events, the conclusions of the PSCs cannot alter this salient fact: BellSouth's performance data and remedy plans provide no assurance that BellSouth has satisfied its statutory obligations or will satisfy those obligations in the future.

³³ Bursh/Norris Supp. Decl. ¶¶ 7-144; WorldCom at 26-34; Birch at 7-8, 12-13, 15-17; Mpower at 12-14, 17-18; Network at 1-6; US LEC and XO Georgia at 28-29, 36-37; Xspedius at 4-9.

³⁴ In contrast to the GPSC, the LPSC does not even discuss issues relating to the reliability of BellSouth's data. The LPSC simply restates its prior recommendation approving BellSouth's application and describes the various workshops and proceedings in which performance measurements, operational issues and remedies are being discussed.

A. BellSouth's Performance Data Are Fundamentally Flawed.

1. BellSouth's Performance Measurements Are Unreliable.

The comments confirm that many of the measurements on which BellSouth relies in its application – including measurements on order completion interval, trunk blocking, flow through, OSS interface availability and hot cuts – fail to capture actual performance. Bursh/Norris Supp. Decl. ¶¶ 95-102; WorldCom at 3. Because these measurements are ill-defined or inadequate, they cannot possibly serve as probative evidence that BellSouth has satisfied its obligations under Section 271. Both the LPSC and GPSC gloss over these deficiencies by asserting that any issues regarding BellSouth's measurements are being resolved in the context of the six month review workshops. GPSC at 30-31; LPSC at 2-3. Although the workshops are a step in the right direction, those proceedings do not and cannot alter the fact that the performance data on which BellSouth relies to support its Application are inaccurate because the underlying BellSouth's performance measures are fundamentally flawed. Bursh/Norris Supp. Decl. ¶¶ 95-102. Where, as here, BellSouth asserts that its performance data prove checklist compliance, BellSouth bears the burden of demonstrating that the performance measures on which it relies accurately capture performance results. BellSouth has not met and cannot meet this burden.

2. BellSouth Has Improperly Implemented Performance Measures.

The comments show that BellSouth's performance data are also unreliable because BellSouth has unilaterally modified performance measures, and its data monitoring and reporting processes are plagued with errors. *See, e.g.*, Birch at 11; Bursh/Norris Supp. Decl. ¶¶ 72-94; Mpower at 17-18; Network at 1-3; WorldCom at 31-32. A prime example of BellSouth's penchant for redefining performance measures is its unilateral decision to revise the service order accuracy measure. Birch at 11-12; Bursh/Norris Supp. Decl. ¶ 106. As the DOJ

correctly observes, neither the Commission nor the state regulatory bodies “can be expected to determine that BellSouth has continued to meet its obligations pursuant to Section 271 if BellSouth can unilaterally change metrics without notice to or input from interested parties.” DOJ Eval. at 13-14.

Although the GPSC contends that BellSouth’s modifications to the service order accuracy measure “were appropriate as they bring BellSouth’s reporting more closely in conformity with the requirements of the SQM,” certain modifications are not grounded in the SQM. GPSC at 19 n. 17. Moreover, BellSouth’s (and the GPSC’s) arguments that these revisions enhance the accuracy of performance reporting are incorrect.

For example, the GPSC appears to accept BellSouth’s contention that its revised methodology will “[i]mprove the statistical validity of the sample” and increase the volume of sampled orders.³⁵ However, by changing the service accuracy measure from a state-specific to a regional measure, BellSouth has thereby assured that its actual performance in Georgia will be concealed. *See* Bell Supp. Reply Decl. ¶ 5; Bursh/Norris Supp. Decl. ¶ 108. Similarly, because BellSouth is no longer evaluating all service orders associated with an LSR, errors in multiple service orders associated with the LSR will not be reflected in BellSouth’s performance results. Bursh/Norris Supp. Decl. ¶¶ 108-112. Additionally, although BellSouth asserts that it changed the service order accuracy measure to *increase* the volume of sampled orders, the reality is that the number of sampled orders under the new methodology has *declined* in many instances. Bursh/Norris Supp. Decl. ¶ 110; Bell Supp. Decl. ¶¶ 6-7. Furthermore, because of the suspiciously small sample sizes that BellSouth has used to calculate performance results, there is

³⁵ *See* Letter from Jonathan B. Banks to William Caton dated March 15, 2002, Attachment at 3-4; GPSC at 19 n. 17.

an inherent risk that BellSouth's actual error rates may be substantially higher than its reported results. Bell Supp. Reply Decl. ¶¶ 9-12.

Significantly, BellSouth's reported results under the prior, as well as the revised, methodology are untrustworthy in other important respects. Remarkably, by BellSouth's own admission, its service order accuracy results under its original methodology are erroneous because certain levels of disaggregation were not statistically valid, and it inappropriately excluded wholesale categories of orders. Bursh/Norris Supp. Reply Decl. ¶ 15. Tellingly, KPMG did not uncover these admitted defects in BellSouth's service order accuracy results during the first metrics audit, and the service order accuracy measure was never examined during the second metrics audit. *Id.* KPMG's failure to detect these errors underscores the fragility of the GPSC's assertion that any measure that "has already been audited by KCI at least once as part of the first two audits" (GPSC at 29) "should provide the FCC ample assurance of the reliability of BellSouth's performance data" (*id.* at 28).

Similarly, neither BellSouth nor the GPSC can reasonably rely on BellSouth's service order accuracy results under its "new" methodology as evidence of improved performance. *See* GPSC at 18; AT&T at 20; Birch at 12-13. The substantial increases in BellSouth's service order accuracy rates since November 2001 are solely attributable to the new methodology, rather than any actual improvement in performance. DOJ Eval. at 13 n. 57; Birch at 10. Furthermore, under BellSouth's new (as well as its prior) methodology, BellSouth has included mechanized orders when calculating performance results even though this Commission has recognized that "manually-processed orders are more prone to error than orders that are processed automatically." *New York 271 Order* ¶ 171; *see also* Birch at 10-11.

BellSouth's recent *ex parte* filings with this Commission on service order accuracy raise additional concerns regarding the reliability of BellSouth's data. Bell Supp. Reply Decl. ¶¶ 6-12; Bursh/Norris Supp. Reply Decl. ¶ 18. Presumably, the populations reported in BellSouth's service order accuracy data should match those for the same product categories in BellSouth's MSS report on missed installation appointments. However, the vast differences in the populations in BellSouth's reported results call into question the overall reliability of BellSouth's performance data. Bursh/Norris Supp. Reply Decl. ¶¶ 19-20.

BellSouth's improper implementation of metrics and erroneous performance results are not confined to the service order accuracy measure. Thus, for example, AT&T has explained that BellSouth's completion notice data are inaccurate because BellSouth has excluded any completion notice when the order is completed in one month and the completion order is issued in another. Bursh/Norris Reply Decl. ¶ 53. Similarly, BellSouth has yet to provide a coherent, consistent explanation regarding the lack of completion notices for orders submitted directly into SOCS. Bursh/Norris Supp. Decl. ¶ 86. AT&T has yet to obtain a satisfactory resolution regarding project orders that are missing from BellSouth's completion notice data. BellSouth still has not resolved the problem of missing acknowledgments from performance data. And unfortunately, BellSouth has yet to provide AT&T with the raw data necessary to verify the accuracy of BellSouth's performance results. Bursh/Norris Supp. Reply Decl. ¶¶ 27, 31.

Additionally, although BellSouth claims that the reliability and stability of its data are demonstrated by the fact that it has restated no performance data from September through December 2001, BellSouth's performance results contain errors that should have resulted in the reposting of data. Further, notwithstanding its contrary assertions, BellSouth did, in fact, restate

certain performance data covering the period in question, and even its restated results are inaccurate. Bursh/Norris Supp. Reply Decl. ¶ 16; Network at 2-3. Thus, as the DOJ correctly observes, the “reduced number of restatements is not proof that the underlying problems that led to the former pattern of restatements have been resolved or that the current data are accurate.” DOJ Eval. at 18-19 (footnote omitted).

The GPSC dismisses all of the data integrity issues that AT&T has raised, asserting BellSouth’s exclusion of data and improper implementation of measures ordered by the GPSC have absolutely “nothing to do with the integrity of BellSouth’s performance data.” GPSC at 31 n. 23. Additionally, the GPSC asserts that AT&T’s arguments regarding data integrity evidence show a “lack of familiarity with BellSouth’s SQM.” *Id.* at 32 n. 23. However, the GPSC ignores that BellSouth’s improper exclusions of data, unilateral modifications of measures, and improper implementation of business rules have spawned inaccurate and unreliable performance results -- results that belie BellSouth’s and the GPSC’s claims regarding the integrity of BellSouth’s data. Bursh/Norris Decl. ¶ 70; Bursh/Norris Reply Decl. ¶ 10. Moreover, the GPSC ignores BellSouth’s assertion that it conducts data reconciliations when it agrees that a “valid” data integrity issue exists, and that BellSouth has conducted and is conducting such reconciliations to address AT&T’s legitimate concerns regarding the inaccuracies in BellSouth’s data. Bursh/Norris Supp. Reply Decl. ¶ 23.

3. The Audits Do Not Prove That BellSouth’s Data Are Accurate.

Equally unavailing is BellSouth’s reliance upon the metrics portion of KPMG’s Georgia third party test of BellSouth’s OSS and KPMG’s Revised Interim Status Report as proof that its performance data are accurate. Bursh/Norris Supp. Decl. ¶¶ 24-50. In this regard, the GPSC contends that the first two metrics audits that have been conducted by KPMG, as well as KPMG’s Revised Interim Status Report, show that BellSouth’s data are accurate and reliable,

and that any remaining testing to be completed in Georgia is inconsequential. GPSC at 29.

These arguments are meritless.

The first two audits do not and cannot serve as incontrovertible proof that BellSouth's data are accurate. During the first two audits KPMG failed to detect then-existing deficiencies in BellSouth's data. *See, e.g.*, DOJ Initial Eval. at 5 n. 14. In addition, the first two metrics audits in Georgia were based upon aged data. Bursh/Norris Supp. Decl. ¶¶ 28, 32. Furthermore, the measurements, performance standards, levels of disaggregation, and analogues have changed dramatically since those audits were conducted. *Id.* at ¶¶ 27, 32. As the DOJ correctly observes "BellSouth has made many systems changes since the first two phases of the audit which affect the majority of its metrics." DOJ Eval. at 20. Indeed, in other contexts, BellSouth has emphasized that its current performance cannot properly be evaluated based upon aged data or standards that changed substantially after testing was first conducted. Bursh/Norris Supp. Decl. ¶ 29. Thus, the first two metrics audits that were conducted in Georgia cannot serve as dispositive proof regarding the accuracy and reliability of BellSouth's current data.

The GPSC also asserts that KPMG's Revised Interim Status Report lends further support to its claim that BellSouth's data are reliable. Furthermore, pointing to the open exceptions in Georgia, the GPSC suggests that the sheer number of failed tests criteria to date should adequately assure this Commission that BellSouth's data are trustworthy. GPSC at 29. However, KPMG's Revised Interim Status Report cannot serve as probative evidence of the accuracy of BellSouth's data "because it was not suited for that purpose." DOJ Eval. at 19. In addition, the data replication test is only 52% complete; and KPMG recently confirmed that it has examined only 10% of the measures that must be evaluated during the data integrity test. Bursh/Norris Supp. Reply Decl. ¶ 35. As the DOJ correctly observes, "the number of open

exceptions and unsatisfied test criteria in past phases do not provide a basis for predicting that other significant issues will not be discovered during the third phase.” DOJ Eval. at 20.

The unreliability of BellSouth’s performance data is further illustrated by the numerous open exceptions and observations in KPMG’s ongoing metrics test in Florida. *See* Bursh/Norris Supp. Decl., ¶¶ 51-71; Covad at 14-15. Neither the GPSC nor the LPSC even mentions, let alone, analyzes these issues. The data integrity and replication problems uncovered during the Florida test cannot and should not be brushed aside lightly. As Covad aptly observes, the veritable “plethora of open exceptions” in Florida, including those relating to data integrity problems, demonstrates that BellSouth’s performance data must be eyed with suspicion. Covad at 14-15. Importantly, the data integrity and data replication segments of the Florida metrics test will not be completed until July 31, 2002, and the possibility remains that other significant defects in BellSouth’s performance data could be discovered during the remaining testing to be completed. Bursh/Norris Supp. Reply Decl. ¶ 37.

Given these circumstances, BellSouth cannot reasonably rely upon the metrics testing that has been completed in Georgia or KPMG’s Revised Interim Status Report as unassailable proof that its data are accurate and reliable. As the DOJ tellingly observes, “until the Georgia metrics audit is complete or until there is additional commercial experience with the reported metrics, the Commission should not rely on BellSouth’s performance reports in reviewing otherwise credible complaints that BellSouth is not meeting the requirements of the Act.” DOJ Eval. at 20. As demonstrated in more detail below, that credible evidence exists in the form of BellSouth’s own data, as well as the real world experiences of the CLECs, which show that BellSouth has failed to satisfy its statutory obligations.

B. The Data Show That BellSouth Is Not Meeting Its Statutory Obligations.

Not only do the comments show that BellSouth's performance data are unreliable, but even BellSouth's own inadequate data (in combination with the CLECs' data) also establish that BellSouth has not provided CLECs with nondiscriminatory access to its OSS or a meaningful opportunity to complete. Thus, the comments confirm that BellSouth continues to rely excessively on manual processing. Birch at 16-18; WorldCom at 30-32; Network at 4-5; AT&T at 17-19. BellSouth's own data, combined with the CLECs' own data, show that BellSouth's service order accuracy rates are woefully inadequate. AT&T at 20-21; Covad at 5-7; Network at 5-6; KMC at 10; WorldCom at 23-28; Xspedius at 6-8. Furthermore, the pool of evidence shows that BellSouth has failed to deliver timely and complete order status notices. The comments also confirm that BellSouth has issued spurious rejection notices to CLECs. Bursh/Norris Supp. Decl. ¶ 42; KMC at 3-4; US LEC and XO Georgia at 37.

Similarly, BellSouth has failed to satisfy its Section 271 obligations during the provisioning process. BellSouth's retail orders have experienced fewer troubles within 30 days of installation than those reported by CLECs with respect to any number of product categories. Bursh/Norris Supp. Decl. ¶¶ 126, 128-129. Even under BellSouth's flawed Average Completion Interval measure, BellSouth has failed to meet parity standards in its provisioning of CLEC orders. *Id.* at ¶¶ 127, 130.

BellSouth also has failed to meet performance standards in the area of maintenance and repair. BellSouth's own trouble report rates confirm that it is not providing CLECs with maintenance and repair services in substantially the same times as those for its retail customers. Bursh/Norris Supp. Decl. ¶¶ 132-135. Additionally, as KMC explains, the chronic repeat troubles experienced by CLECs "are so endemic as to prevent UNE-loop competition." KMC at 10 (footnote omitted).

BellSouth's data and CLEC experience also confirm that BellSouth has failed to satisfy its Section 271 obligations during the billing process. BellSouth's own data show that it has failed to meet the performance standards for the Non-Recurring Charge Completeness and Invoice Accuracy measures. Bursh/Norris Supp. Decl. ¶¶ 132-135. And as Mpower has explained "[b]ecause of BellSouth's unusually defective wholesale billing system, Mpower must spend far more time on billing disputes with BellSouth than with any other RBOC." Mpower at 14.

Invariably, when faced with its own performance data showing that it has failed to meet parity and benchmark standards, BellSouth relies on promises of improved performance, refers to external factors that purportedly affected its performance, or attempts to diminish the significance of its performance failures. Bursh/Norris Supp. Reply Decl. ¶¶ 39-46. However, BellSouth's unfulfilled "paper promises" cannot and do serve as probative evidence of its present compliance with its statutory obligations. BellSouth has provided no empirical evidence demonstrating that its performance failures are attributable to causes other than those of its own making; and BellSouth's various rationalizations cannot withstand scrutiny. *Id.* Moreover, BellSouth's characterizations regarding the relative significance of its performance failures are nothing more than partisan, self-serving statements of no probative value.

C. BellSouth's Performance Remedy Plans Will Not Prevent Backsliding.

Contrary to the conclusions of the GPSC and LPSC, the problems regarding BellSouth's performance failures will not be eliminated simply because performance remedy plans exist. *See* Bursh/Norris Decl. ¶ 48.³⁶ Only the powerful incentive of Section 271 approval,

³⁶ *See, e.g.,* GPSC at 19 (noting that the prospect of penalty payments will assure that BellSouth's service order accuracy rates will improve); *Ex Parte* letter from Patrick J. Donovan (Cbeyond) to William F. Caton dated March 26, 2002 at 2 (noting that BellSouth has no incentive to meet completion intervals "because the products that fall into the UNE Combo Other

rather that the monetary incentives of the remedy plans, will be effective in ensuring BellSouth's future compliance with its Section 271 obligations. As AT&T has previously shown, the performance remedy plans, which omit metrics, impose insufficient financial penalties, and contain structural defects, assure that BellSouth will experience no significant financial consequences for specific performance deficiencies. Bursh/Norris Decl. ¶¶ 125-162. Even if the remedy plans did not suffer from these infirmities, the unreliability of BellSouth's performance data, which should serve as the springboard for remedies payments, would instead thwart the efficacy of these plans. Further complicating matters is the fact that BellSouth's compliance – even with its demonstrably flawed performance enforcement plans – has never been validated. In this regard, KPMG recently advised the CLECs that its evaluation of BellSouth's compliance with SEEM is only 15% complete. Bursh/Norris Supp. Reply Decl. ¶ 48. Thus, it remains unclear whether KPMG's audit will reveal substantial deficiencies in BellSouth's implementation of the purported self-executing remedies under SEEM.

BellSouth invites the Commission to approve its application despite the evidence that its performance data are unreliable and inaccurate. Indeed, the record establishes that: deficiencies in BellSouth's performance data have already been revealed during metrics testing in Georgia and Florida; metrics testing is far from complete; its own data, as well as the real world experiences of CLECs, demonstrate that it is not satisfying its statutory obligations; BellSouth's performance remedy plans contain structural defects which prevent them from deterring anticompetitive conduct; and BellSouth's compliance with its flawed performance enforcement plans has not been validated. The Commission must reject this invitation.

category, including EELs, are not subject to self-effectuating enforcement mechanism ("SEEM") payments" (footnote omitted).

III. BELLSOUTH STILL DOES NOT MAKE UNE-P AVAILABLE ON A NON-DISCRIMINATORY BASIS.

Numerous commenters confirm AT&T's criticisms of BellSouth's UNE-P performance, and demonstrate that BellSouth fails to offer UNE-P on a nondiscriminatory basis. Other CLECs are experiencing the same problems with outages and service troubles that AT&T documented in its Supplemental Comments (Seigler Supp. Decl. ¶¶ 9-18), and various CLECs have described the anticompetitive impact of BellSouth's failure to develop a workable process for converting prospective UNE-P customers who receive BellSouth DSL service. BellSouth's failure to develop a process for such conversions, and BellSouth's erroneous inclusion of the ADL11 USOC code on customer CSRs, pose significant barriers to CLECs who attempt to market UNE-P service to this growing number of customers.

The comments by WorldCom (at 26 & Lichtenberg Decl. ¶¶ 35-37), Xspedius (at 8; Goodly Decl. ¶ 16), and Network Telephone (at 5-6) show that BellSouth continues to be responsible for an unacceptable number of customer outages and service troubles associated with conversion of UNE-P customers. Network indicates (at 5-6) that 3 percent of its customers have experienced loss of service during conversion from resale to UNE-P service, with the average loss of service exceeding 24 hours, and WorldCom states that almost 2 percent of customers have lost service in the first 30 days of service since WorldCom began its UNE-P service in May 2001. WorldCom Comments at 26 & Lichtenberg Decl. ¶ 35. The outages and service troubles experienced by AT&T, WorldCom, and other CLECs are largely the result of BellSouth's continuing use of the separate "D" disconnect and "N" new orders that lead to premature disconnection when the orders are not properly coordinated, and errors by BellSouth personnel that occur in the retyping of orders that fall out for manual processing. Seigler Supp. Decl. ¶¶ 10, 15.

The GPSC claims (at 22-24) that AT&T and other CLECs had not demonstrated that the dual order issue is a significant problem. However, because a UNE-P conversion involves only a software change, there should be no outages or service troubles associated with it. Thus, the continued existence of outages and troubles indicates the presence of a genuine and serious problem. Last fall, the GPSC explicitly recognized that the use of the dual orders was a significant issue when it ordered BellSouth to fix the problem by implementing a single “C” order by January 4, 2002. BellSouth has missed that deadline and is only now beginning to implement its proposed single “C” order. Given the fact that BellSouth’s prior solutions to this dual order problem did not work (Seigler Supp. Decl. ¶14), BellSouth cannot rely on the promise of this untested “C” order, but must instead demonstrate that the “C” order works before this issue can be considered resolved. Although BellSouth implemented the “C” order on March 23, 2002, in Release 10.4, it has already issued two defect change requests (CR 0715 and CR 0716) on this functionality.

The comments also demonstrate that BellSouth’s failure to develop a process for handling UNE-P conversions of BellSouth DSL customers is anticompetitive and discriminates against CLECs. BellSouth refuses to allow a UNE-P conversion of a customer receiving DSL service from a BellSouth affiliate or network service provider (“NSP”). BellSouth places an ADL11 USOC code on the CSR of its DSL customers and rejects any UNE-P conversion order that contains an ADL11 USOC on the customer’s CSR. BellSouth requires the DSL customer to give up the DSL service before BellSouth will convert the customer to UNE-P service.

CLEC commenters agree that this practice is anticompetitive and has a significant discriminatory impact. The Comments of Birch Telephone (at 30-34), KMC Telecom (at 12), Xspedius (at 7 & Goodly Decl. ¶ 15), Network Telephone (at 10), and Mpower Communications

(at 9-10) underscore the problems CLECs have encountered with BellSouth's policy of refusing to convert UNE-P customers that receive BellSouth DSL.³⁷ First, BellSouth has not established a process for converting its DSL customers to CLEC UNE-P service. Second, BellSouth touted for a while a cumbersome process where the CLEC would call BellSouth to determine the identity of the DSL provider listed for the customer so that customers who said that they were not taking DSL from BellSouth would know which DSL provider to call to request the removal of the ADL11 USOC. The DSL provider would then be required to place an order with BellSouth to remove the USOC. Only after the ADL11 USOC was removed from the CSR would BellSouth convert the customer to the UNE-P CLEC. Seigler Supp. Decl.¶ 22. At the February 26, 2002 UNE-P Users Group meeting, however, BellSouth abandoned that process. *Id.* at 25.

In an ex parte filing submitted on March 19, 2002,³⁸ BellSouth described discussions with Birch Telephone regarding the use of a special electronic LSR for handling these orders (Change Request 0625), but that process has not been finalized or made available to other CLECs, BellSouth March 19 Ex Parte at 3-4. At the March 26, 2002 UNE-P Users Group meeting, BellSouth stated that it was testing a manual "interim process" with Birch for handling these UNE-P conversion orders with ADSL USOCs on the CSR and that it planned to make the process available to all CLECs in April.³⁹ Even if BellSouth implements this manual "interim

³⁷ Birch and KMC also describe the anticompetitive aspects of BellSouth's practice of placing DSL service on the main line of a multi-line account. KMC Comments at 12-13; Birch Comments at 31-32. As a result, none of the lines can be converted to CLEC UNE-P service.

³⁸ Letter from Sean A. Lev to William A. Caton (3/19/02) ("BellSouth March 19 Ex Parte").

³⁹ A copy of a document distributed by BellSouth at the March 26, 2002 meeting, which describes the "interim process," is attached hereto as Attachment 10.

process” as planned, however, it is unclear whether the process will work. In any event, it is likely to be months before a permanent workable electronic process exists.

In its ex parte filing, BellSouth argues that it is not required to provide DSL service to any customer purchasing a CLEC’s UNE-P service. BellSouth March 19 Ex Parte at 1-2. Even if that were the case, BellSouth must still provide a process by which customers can seamlessly convert to UNE-P service, and BellSouth’s processes (including the process that it abandoned on February 26, 2002) are cumbersome and plainly discriminate against CLECs seeking to convert customers to their UNE-P service. BellSouth must establish a workable process that will permit CLECs to convert BellSouth DSL customers without imposing undue burdens on the customer or CLEC. Until such a process is established and operational, BellSouth cannot be found to comply with its nondiscrimination obligations under the Act.

As previously indicated, another significant problem identified by CLECs is the large number of CSRs that contain erroneous ADL11 USOC codes. Birch Telephone (at 30), KMC Telecom (at 15), and Xspedius (at 7; Goodly Decl. ¶ 15) all describe situations in which BellSouth rejected UNE-P orders because the customers had an ADL11 USOC on their CSR even though the customers were not BellSouth DSL customers at the time. Clearly, these erroneous ADL11 USOC listings add to CLEC costs, cause customer frustration (that will often be directed at the CLEC), and lead to lost business for CLECs.

In sum, both the outages and service troubles associated with the provisioning and conversion of BellSouth customers to CLEC UNE-P service, and BellSouth’s discriminatory conduct in failing to establish a process for converting BellSouth DSL customers and in including erroneous ADL11 USOC codes on customer CSRs, preclude a finding that BellSouth has met its obligations under the Act.

IV. THE COMMENTS CONFIRM THAT BELL SOUTH'S INFLATED UNE RATES PRECLUDE A GRANT OF THIS JOINT APPLICATION.

The comments confirm that BellSouth's current application does nothing to address the numerous fundamental TELRIC violations that substantially inflate BellSouth's Georgia and Louisiana UNE rates. *See, e.g.,* Allegiance at 2-3; ASCENT at 2-7; WorldCom at 35-43. And as explained by the DOJ, the low levels of UNE-based entry in Georgia and Louisiana preclude any presumption that BellSouth's Georgia and Louisiana UNE rates are TELRIC compliant. *See* DOJ Eval. I at 11, 14 (noting that for Georgia, "the amount of entry using UNE loops [is] too small to serve as evidence that the costs of acquiring such loops from BellSouth are acceptably low," and that UNE-based entry in Louisiana is even "less than in Georgia"); DOJ Eval. at 4-7 ("[b]ased on current data on CLEC entry in Georgia and Louisiana, the Department finds no basis to address issues beyond those discussed in its Georgia/Louisiana I Evaluation"). On this record, there is no basis for finding that BellSouth has carried its burden of proving that its Georgia and Louisiana UNE rates satisfy Checklist Item Two.

Critically, BellSouth's Louisiana Application must be rejected for a second and independent reason. As demonstrated by AT&T BellSouth's UNE rates in Louisiana subject competitors to a "price squeeze" that forecloses efficient UNE-based local entry in Louisiana. *See* AT&T at 50-61. Residential gross margins are negative in two of the three UNE zones in Louisiana, and the margin in zone 1 is not sufficient to cover any potential entrant's internal costs of operating a local telephone business. *See id.*⁴⁰ WorldCom (at 35-36) likewise reports that BellSouth's rates preclude competition, and no commenter provides any basis for

⁴⁰ Any assertion that a price squeeze does not exist in Louisiana because there have been limited and targeted local entry attempts must be rejected. As explained by the DOJ, "entry via the UNE-platform in Louisiana is still minimal." DOJ Eval. at 7. Indeed, according to BellSouth's data, CLECs use UNE-P to serve only 0.3 percent of residential customers in Louisiana, and only 2.9 percent of business lines in Louisiana. *See id.* at 6.

concluding otherwise. The record evidence, therefore, establishes that BellSouth's Louisiana UNE rates (1) violate Checklist Item Two because they are "discriminatory" and (2) contravene Section 271's public interest test. *See* AT&T at 50-61. Thus, whether the Commission chooses to reject the Georgia Application or not, it should nevertheless deny BellSouth's Louisiana Application.

BellSouth's Georgia UNE rates also are inflated far above TELRIC levels. In this regard, one point deserves particular emphasis: BellSouth has effectively conceded that the non-loop and daily usage file ("DUF") rates on which its Georgia application relies are not currently TELRIC-compliant. *See* WorldCom at 42-43; AT&T at 45. In the ongoing Georgia UNE rate proceeding, BellSouth recently submitted new non-loop and DUF rates that BellSouth claims are TELRIC-compliant and that are substantially lower than those on which its Application is predicated. *See* WorldCom at 42-43; AT&T at 45. Based on BellSouth's newly proposed UNE rates, its current non-loop and DUF rates are at least 81 percent and 112 percent above TELRIC levels, respectively. *See Id.* at 45.

As demonstrated by the commenters, the fact that BellSouth's non-loop and DUF rates are so far above TELRIC levels is hardly surprising. AT&T and other commenters have identified myriad TELRIC violations that inflate BellSouth's non-loop and DUF rates. *See* ASCENT at 5-7; WorldCom at 36-43; AT&T at 44-46. The attached Declaration of Steven Turner describes additional fundamental TELRIC violations in BellSouth's Georgia DUF cost study that also contribute to BellSouth's substantially overstated DUF rates.

As a preliminary matter, BellSouth's Georgia DUF cost study is, on its face, not TELRIC-compliant. *See* Turner Decl. ¶¶ 7-8. BellSouth processes all DUF records for the states in its region at a single facility. *See id.* ¶ 7. It is axiomatic, therefore, that the costs of processing

messages to produce DUF records should not vary from state-to-state within BellSouth's region. *See id.* Remarkably, however, the DUF cost study on which BellSouth's Georgia DUF rates are based produces substantially higher DUF cost estimates than do BellSouth's other DUF cost studies. *See id.* Because there should be little or no variation in DUF cost estimates among states, BellSouth's Georgia DUF cost study plainly contains substantial TELRIC errors that inflate its Georgia DUF rates.

One glaring TELRIC error in BellSouth's Georgia DUF cost study is that it relies on severely understated demand estimates for DUF records. *See* Turner Decl. ¶¶ 9-15. BellSouth's Georgia DUF cost studies compute DUF rates by computing the costs of processing all DUF records, and then by dividing those costs by the number of messages processed at its DUF processing facility. *See id.* By severely understating the number of messages that are processed, BellSouth has improperly understated the denominator in that computation, resulting in substantially overstated DUF rates. *See id.*

Another obvious TELRIC error in BellSouth's Georgia DUF cost study is that it over-allocates certain costs of processing messages to CLEC messages, while at the same time under-allocating costs of processing BellSouth messages. *See* Turner Decl. ¶¶ 16-17. This arbitrary allocation process makes no sense and appears to be designed to shift DUF costs to CLECs. All DUF messages, regardless of the source, are processed in the same location by the same facilities. *See id.* All processing costs, therefore, should be equally distributed among messages, not arbitrarily assigned to CLEC or BellSouth messages. *See id.*

BellSouth's Georgia cost study also inflates DUF rates by implementing non-TELRIC assumptions that overstate its DUF system development costs. *See* Turner Decl. ¶ 20. In addition, BellSouth's Georgia DUF cost study improperly recovers these non-recurring costs

using arbitrarily low amortization periods. *See* Turner Decl. ¶ 18. And in some cases, BellSouth actually misallocates these non-recurring costs to its recurring cost category. *See id.* ¶ 19. Each of these TELRIC errors acts to further inflate BellSouth's Georgia DUF rates.

Because BellSouth's Georgia and Louisiana UNE rates far exceed TELRIC levels, its Application violates Checklist Item Two and should, accordingly, be denied. However, as AT&T explained in its Supplemental Comments (at 46-50), in the event the Commission decides otherwise, and considers granting this Application despite its non-compliance with the competitive Checklist, that approval should be conditioned on BellSouth first amending its SGAT to adopt, on an interim basis subject to true-up, the non-loop rates (of which the switching component is the dominant part) and DUF rates that it has proposed in the ongoing UNE rate proceeding. Numerous factors weigh heavily in favor of that condition: (1) all parties, including presumably BellSouth, agree that TELRIC-compatible recurring non-loop rates and DUF rates for Georgia today should not exceed those proposed by BellSouth in the state proceeding; (2) it is imperative that the Commission reject these inflated Georgia rates, because Georgia is likely become a "benchmark" state that others in the BellSouth region will follow; (3) the Commission cannot rely on the GPSC to address BellSouth's overstated Georgia rates, because there is no way to know when the GPSC will complete its review and; (4) during the interim period, BellSouth will have every incentive to delay that action until it has obtained Section 271 approval in its other states on the grounds, at least in part, that its rates in those states compare "favorably" to its overstated Georgia rates. *See* AT&T at 47.

BellSouth has suggested that the Commission can ignore its overstated DUF rates because, according to BellSouth, they are subject to "true-up." *See, e.g., Ex Parte* Letter from Glenn T. Reynolds (BellSouth) to William Caton (FCC Acting Secretary), CC Docket No. 02-35

(Dated March 15, 2002). AT&T, however, has been unable to locate any GPSC order declaring that DUF rates are in fact subject to true-up. The only reference to a “true-up” that AT&T has been able to locate appears in a footnote of BellSouth’s SGAT, which states only that BellSouth’s tariffed Georgia DUF rates are “[i]nterim and subject to true-up based upon final Order in Docket No. 14361-U” *See* Georgia SGAT, Attachment A (March 22, 2002). But that footnote does not explain how or when those rates are subject to true-up, nor does it state the conditions under which a true-up would be allowed. Indeed, it appears from this language that the GPSC final Order could actually excuse BellSouth from compensating CLECs for past DUF overpayments. Thus, neither CLECs nor the Commission can reasonably rely on that footnote to correct any overpayments caused by BellSouth’s inflated DUF rates.

Even if it were clear that BellSouth’s DUF rates were subject to a true-up, that mechanism cannot prevent BellSouth from using its excessive Georgia DUF rates as a benchmark to gain Section 271 approval in other states before the GPSC has concluded its current UNE rate proceeding. *See* AT&T at 48. Nor could a true-up mechanism in Georgia compensate CLECs for premature approval of inflated rates in other BellSouth states. As documented by AT&T in its Supplemental Comments (at 48-50), approval of a Section 271 application where a BOC’s rates are inflated but subject to “true-up” can severely impede competitive entry into local markets.

To avoid such anticompetitive results, it is imperative that the Georgia and Louisiana rates fully comply with TELRIC principles. Accordingly, while the Commission should reject this application, if it concludes otherwise, it should at least require the Georgia non-loop and DUF rates to be appropriately modified, so as to avoid establishing a benchmark that

everyone recognizes would grossly exceed the cost-based rate required by the Act and the Commission's rules.

CONCLUSION

For the foregoing reasons, and for the reasons stated in AT&T's initial comments, AT&T respectfully submits that BellSouth's Joint Application for Georgia and Louisiana should be denied.

Respectfully submitted,

/s/ Peter D. Keisler

Mark C. Rosenblum
Lawrence J. Lafaro
David Eppsteiner
Richard Rocchini
AT&T CORP.
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4263

Peter D. Keisler
Merinda Wilson
Richard E. Young
Ronald S. Flagg
Alan C. Geolot
Christopher T. Shenk
SIDLEY AUSTIN BROWN & WOOD, LLP
1501 K Street, NW
Washington, D.C. 20005
(202) 736-8000

Attorneys for AT&T Corp.

March 28, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2002, I caused true and correct copies of the forgoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: March 28, 2002
Washington, D.C.

/s/ Peter M. Andros
Peter M. Andros

SERVICE LIST

William F. Caton
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Janice Myles
Policy and Program Planning Division
Federal Communications Commission
445 12th Street, SW
Room 5-B145
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, SW, Room CY-B402
Washington, D.C. 200554

Luin P. Fitch
U.S. Department of Justice
Antitrust Division
Telecommunications Task Force
1401 H Street, NW, Suite 8000
Washington, D.C. 20005

Leon Bowles
Division of the Telecommunications
Unit
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334

Arnold Chauviere
Utilities Division Head
Louisiana Public Service Commission
One American Place, Suite 1630
P.O. Box 91154
Baton Rouge, LA 70821-9154

James G. Harralson
Fred J. McCallum, Jr.
Jim O. Llewellyn
Lisa S. Foshee
BellSouth Corporation
4300 BellSouth Center
675 West Peachtree Street
Atlanta, GA 30375

Michael K. Kellogg
Sean A. Lev
Leo R. Tsao
Kellogg, Huber, Hansen, Todd & Evans
1615 M Street, NW, Suite 400
Washington, D.C. 20006

Mary C. Albert
Morton J. Posner
Allegiance Telecom, Inc.
1919 M Street, NW, Suite 420
Washington, D.C. 20036

Matthew D. Bennett
Alliance for Public Technology
919 19th Street, NW, Suite 900
Washington, D.C. 20006

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1424 16th Street, NW, Suite 105
Washington, D.C. 20006

Larry E. Robbins
Wyrick Robbins Yates and Ponton, LLP
4101 Lake Boone Trail, Suite 300
Raleigh, NC 27607

Gregory C. Lawhon
Rose Mulvany Henry
Birch Telecom of the South
2020 Baltimore Avenue
Kansas City, MO 64108

Catherine Boone
Jason D. Oxman
Covad Communications Company
600 14th Street, NW, Suite 750
Washington, D.C. 20005

Genevieve Morelli
Andrew M. Klein
Jennifer M. Kashatus
Michael C. Engel
Kelley Drye & Warren LLP
1200 19th Street, NW
Washington, D.C. 20036

Russell I. Zuckerman
Francis D. R. Coleman
Richard E. Heatter
Marilyn H. Ash
Mpower Communications Corp.
175 Sully's Trail, Suite 300
Pittsford, NY 14535

Patrick J. Donovan
Ronald W. Del Sesto, Jr.
Swidler Berlin Shereff Friedman
3000 K Street, NW, Suite 300
Washington, D.C. 20007

Jake E. Jennings
NewSouth Communications Corp.
2 Main Street
Greenville, SC 29601

Laura H. Phillips
Jason E. Rademacher
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, D.C. 20036

Marybeth M. Banks
H. Richard Juhnke
Sprint Communications Company LP
401 9th Street, NW, Suite 400
Washington, D.C. 20004

Richard M. Rindler
Patrick J. Donovan
Michael W. Flemming
Swidler Berlin Shereff Friedman
3000 K Street, NW, Suite 300
Washington, D.C. 20007

Robert Lopardo
Keith L. Seat
WorldCom, Inc.
1133 19th Street, NW
Washington, D.C. 20036

Paul F. Guarisco
Shirley & Ezell, LLC
2354 South Acadian Thruway, Suite F
Baton Rouge, LA 70808

Robert J. Aamoth
Jennifer M. Kashatus
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, D.C. 20036